TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

**APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
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[fol. 4453] —77—

REPORT OF THE COMPOSITE AGENCY GROUP

M/377 Mr. E. S. Sullivan, Chairman of the Composite Agency Group which met in New York on April 10, 1951, presented the Agency report.

General Sales Agents—Resolution 800

M/378 The Composite Agency Group had recommended revalidation of the Resolution with deletion of paragraph 12 and with the addition of a new paragraph to allow the Enforcement Office to inspect books and records of General Sales Agents relating to the sale of air transportation.

M/379 KLM stated that they had not been able to submit the information called for by the Madrid meeting of the Conferences since Resolution 800 was not being implemented fully by all carriers, and, in consequence, they were not able to assess the degree of hardship with which the restrictive clauses of this resolution imposed upon them.

M/380 With reference to the new paragraph permitting the Enforcement Office to inspect books and records of General Sales Agents, the LDO drew attention to the Conference Provisions relating to enforcement machinery and suggested redrafting this paragraph to bring it into line with the wording of the Provisions. The Conferences accepted these recommendations and adopted Resolution 800 incorporating the new paragraph. Two other amendments which were proposed when other questions relating to Agency administration were developed were also agreed upon.

M/381 To prevent the sales agency rules being circumvented by General Sales Agents individually or General Sales Agents in collaboration with Members, it was considered necessary to insert a new paragraph which defines clearly, the terms under which a General Sales Agent may disburse commission. A second paragraph was added prohibiting the disbursement of all or any portion of a General Sales Agent's overriding commission.

Sales Agency Rules—Resolution 810

Definition of "Suitable Practices"—Section C (1)

M/382 The Agency Committees have, for some time, experienced difficulty in deciding whether the employment by an Agent of personnel formerly employed by an IATA Approved Sales Agent which had gone into default would disqualify an agent under Paragraph C(1) of Resolution 810 referring to "suitable practices." The IATA Legal Adviser and the Legal Drafting Officer had given the question careful consideration, and had provided a legal opinion covering this subject.

M/383 The Conferences accepted this opinion and directed Members and Agency Committees to be guided accordingly. In Members' own interests, it was agreed that under no circumstances would the advice given Members by legal counsel be divulged to agents.

[fol. 4454] —78—

Procedure for Approval or Retention of Agents—Section B

M/384 Consequent upon the decision to discontinue the use of a combined passenger and cargo form of agency application, it was necessary to amend the third sentence in Section B, Paragraph (1), which now reads "there shall be *two* types of agency application forms. . . .".

M/385 The Conferences noted that all governments had approved Resolutions 810i (General Sales Agents of Non-IATA Air Carriers) and 810j (Equality of Commissions) and accepted the Agency Group's recommendation that the terms of these resolutions be incorporated in the Sales Agency Rules under Section B. This required the addition of two new paragraphs (9) and (10).

Rates of Commission—Passenger Transportation—Section J

M/386 A Working Group was set up to study the problems connected with rates of commission for passenger transportation, and this Group recommended a complete revision of Section J to clarify its various provisions.

M/387 SAS felt that the inclusion of Paragraph (10) under Section B might lead to complications unless Section J governing the payment of commission on charters was amended. According to the present rules, an agent may not receive rates of commission from a non-IATA carrier on charters higher than the IATA rate for scheduled services. IATA Members, on the other hand, could, if they so desire, pay commissions on charters exceeding the rate for scheduled services. This Member suggested the deletion of the reference to charter rates in Section J or alternatively, an amendment to read "that where practical commissions on charters shall not exceed 5%, but in no case more than 7½%." In essence, this amendment was accepted by all Conferences.

M/388 For clarification and to avoid misinterpretation, the Conferences decided to define in precise terms an agent's commission entitlements with respect to subsidized immigrant traffic. Under the revised provisions of the resolution, an agent may receive commission only on that portion of the fare he actually collects or, in cases where a government pays a portion of the fare, an agent may claim commission if the government transportation request is drawn in his favor, it is cashed by him and he remits the proceeds to a Member.

M/389 An amendment was made to reflect the accepted interpretation covering the payment of commission on "prepaid" business. An agent making a "prepaid" sale is entitled to the commission applicable, notwithstanding the fact that the fare might be paid by the purchaser directly to the Member and the agent himself does not collect the fare.

M/390 The Traffic Conferences agreed that these new provisions should not become effective until January 1, 1952.

[fol. 4455] —79—

Rate of Commission—Cargo Transportation—Section K

M/391 The Conferences agreed to limit the rate of commission for carriage of international air cargo on chartered aircraft to 5%. This was accomplished by the deletion of

the words "when practicable" in the third line of Section K, Paragraph (1).

Limitations on Payment of Commissions—Section M

M/392 The Agency Group drew attention to the fact that under the present Resolutions 810 and 851, it is possible for a non-approved sales agent to collect commission indirectly from an IATA carrier. A non-IATA carrier with whom a Member has an interline agreement is not subject to the provisions of Resolution 810, except that commissions exceeding the agreed IATA rates cannot be paid. Resolution 851 grants this exception. In practice, therefore, a non-IATA carrier may disburse all or portions of its commissions to its sub-agents whether or not they are IATA approved.

M/393 To eliminate this conflict, the Group had suggested amendments to both resolutions which would prevent a non-IATA carrier, approved as a sales agent under the special rules relating to non-IATA carriers, rebating commissions to agents not approved by the Association.

M/394 The Conferences favored the suggestion in principle, but felt that an exception should be made in the case of steamship companies qualified as approved agents under the special rules and also members of the Air Traffic Conference of America. An Ad Hoc Committee, which was set up to study the matter, recommended that the situation be regulated under Section M of the resolution rather than under Section P, as suggested by the Composite Agency Group. The Conferences accepted the Ad Hoc Committee's proposal which, in addition to clarifying the present limitations of payment of commissions, reflected the wishes of Members.

M/395 In Traffic Conference 3 Members took cognizance of special conditions prevailing and agreed that, within the area falling under the jurisdiction of the Hong Kong Agency Investigation Board, agents may disburse all or portions of their commissions to sub-agents or brokers whose names are submitted to the Board. CPAL abstained

from voting on this motion and made the following statement:

"That while 'recognition of the non-IATA approved 'Hong Kong Brokers' is a step in the right direction and while Canadian Pacific Air Lines and other Member airlines will, undoubtedly, make a true endeavor to apply and live with the resolution as it is now to be amended, we, Canadian Pacific Air Lines, feel bound to inform the Conference of our views and recommendations in this matter:'

[fol. 4456] —80—

"(i) The filing of a list of 'Brokers' used by each IATA approved sales agent will tend to falsify what is not a fairly clear situation.

"(ii) Placing the onus to maintain such a list and keep the AIB properly informed of changes etc. on the IATA approved sales agent is not considered to be realistic.

"(iii) The 'IATA approved sales agent' is being forced by this amendment to 'split' his commissions and this is not a recommended procedure.

"(iv) We have, as yet, done nothing to prevent or at least discourage rebates to passengers.

"It is, therefore, recommended that Conference study and perhaps capitalize on the experience of the steamship companies who also faced the Oriental ways of doing business, and who have for many years found it necessary to recognize the 'Hong Kong Brokers'.

"We believe the Steamship Conference eventually decided that their Members must deal directly with both Steamship Conference agents and separately with the 'Hong Kong Brokers', but that their Conference agents would be paid 5%, whereas the 'Brokers' would only receive 3%.

"Canadian Pacific Air Lines suggests that the 'Hong Kong Broker', through our approved agents, receives too great a commission, and this encourages 'Rebates.'

"Canadian Pacific Air Lines proposes that Member airlines at Hong Kong should be permitted to deal directly with the 'Brokers', and follow the example of steamships in limiting Brokers' Commission to 3%.

"Canadian Pacific Air Lines suggests that the matter be studied by the Agency Committee, which will report and prepare a recommendation for the next Conference meeting."

Standard Sales Agency Agreements—Section G

M/396 To allow for difficulties experienced in certain areas, it was agreed to amend Section G, Paragraph (1), which at present makes it mandatory for a Member appointing an approved sales agent to execute a Standard Sales Agency

—81—

[fol. 4457] Agreement. Under the new provision, a Member may enter into an agreement with an agent either in the form of the Standard Sales Agency Agreement or in a form which will give legally binding effect to the terms and conditions contained in the Standard Sales Agency Agreement.

Payment of Commission to Employees

M/397 Section M(4) of Resolution 810 permits a Member to pay agency commission to its directors, officers or full-time employees. The Agency Committee of Traffic Conference 3 reported that in the Hong Kong area there was evidence that employees of the Members, receiving remuneration on the basis of commission on sales, made a practice of rebating commission to agents and in some cases passengers. To combat this irregular practice, the Agency Committee of Traffic Conference 3 recommended the insertion of clauses in Resolution 810 specifically prohibiting employees rebating commission. This recommendation received the majority of support of the Composite Agency Group and further recommended that the amendment should apply on all areas.

M/398 SAS objected to the proposed amendment on the basis that they considered that employees of Members are included in the term "Member" used throughout IATA

resolutions and, as such, carriers themselves would be in violation of the sales agency rules if they permitted the rebating of commissions by their employees. This view was accepted by the majority of Members and a motion to adopt the amendment proposed by the Agency Group was defeated.

Appropriate Notation on Air Waybill to Establish the Right to Commission

M/399 The Chairman of the Composite Agency Group reported that the Group was unable to recommend a solution to the difficulties arising from the implementation of the last sentence of Section K(2). The Agency Committees of Traffic Conferences 1 and 2 had recommended the inclusion of a special box on the air waybill reading "Commission payable to ————" for use by carriers who would decide to whom commission is payable. This suggestion was rejected by the Group on the grounds that one of the parties concerned might regard such action as arbitrary and make legal claim for the commission involved. The Conferences accepted the Agency Group's views and suggested that the matter be given further study by the Agency Committees.

Office Space Shared by Member and Agent

M/400 The Composite Agency Group was of the opinion that this practice was undesirable and had recommended the addition of a new paragraph in Resolution 810 prohibiting a Member and an agent occupying the same office space unless permitted to do so by the Agency Committee. KLM explained that for reasons of economy they had several such agreements with agents and suggested that unless substantial reasons were provided against the continuation of agreements, their present arrangements should stand. They also felt that authorization to share office space with an agent should be in the hands of the Conferences and not the Agency Committees.

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M/401 The Conferences felt that the matter required further study by the Agency Committees and that question of

restriction should only be applicable in cases where it can be established that a Member gains a competitive advantage by the arrangement.

Payment of Commission on Insurance Premiums

M/402 The Composite Agency Group had considered the question of whether a carrier acting as a broker for an insurance company was in violation of the Agency Resolution if he allowed an agent commission on insurance sold. It was pointed out that Section K(1) distinguishes clearly between transportation charges and other charges such as insurance, taxes and COD charges and the Conferences endorsed the opinion that the practice of paying commission on insurance premiums was not a violation of the resolution.

Single Agency Agreements concluded by the Secretary on Behalf of IATA Members

M/403 The Chairman of the Composite Agency Group explained that under the scheme proposed, Conference Secretaries would be authorized to conclude that part of the sales agency agreement relating to terms and conditions with agents on behalf of Members. Members would be relieved of a considerable administrative burden. Although the proposal was intended specifically, to cover agency administration in U.S. and Canada, it could be adapted for application for the rest of Traffic Conference 1 and also Conferences 2 and 3.

M/404 The LDO stated that, aside from administrative difficulties, there appeared to be some doubt as to the ability to prove the existence of a contract. He felt that before the scheme is adopted by the Conferences, the Legal Committee should clear this point and also the question of the applicable law when agreements with agents in a number of countries are signed by the Secretary.

M/405 NAL confirmed that the ATC scheme had been cleared by their attorneys. However, the question of the applicable law had not presented difficulty since the ATC scheme only covered agents in U. S. and Canada. In the opinion of this Member, it would be advantageous for IATA

to test the scheme in North America. BEA and BOAC stated that they were not in favor of introducing the scheme in one area and not in others. Members had not had much time to study it in detail and suggested, therefore, that it be referred back to the Legal Committee and Agency Committees for further examination.

M/406 A Member pointed out that since the Agency Committee of Conference 1 had been responsible for drafting the proposal and had already recommended its adoption in U. S. and Canada, there was no reason to refer it back to this Committee. It was suggested that as far as Conference 1 was concerned, this scheme should be submitted to the Members for adoption by mail vote since it was cleared by the Legal Committee. In the meantime, the question could be studied by the Agency Committees of the other Conferences. It was agreed to adopt this procedure.

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Joint IATA/ATC Agency Administration

M/407 Members of Traffic Conference 1 noted the views of its Agency Committee regarding the question of joint IATA/ATC administration of agents in the United States and Canada. The Committee had studied the matter and acknowledged the desirability of joint administration, but had come to the conclusion that this would not be possible until the IATA and ATC resolutions covering Sales Agency Rules contained identical provisions. It was suggested that it would be more convenient for the ATC to adopt IATA Sales Agency Rules than vice versa, since it appeared unwise to disturb the worldwide uniformity of agency procedures which the Association had achieved.

M/408 The meeting was informed that the Executive Committee had also studied the question and had authorized the Director General to develop the matter further.

Agency Fees

M/409 The Conferences accepted the Agency Group's recommendation and the Entrance and Agency Fees for the calendar year 1952 were agreed upon at the present level. In regard to Traffic Conference 1, where the position

is influenced by IATA's close relations with the Air Traffic Conference of America, it was agreed that the Association should offer to collect, at the same time as the billing of IATA sales agents, the amount of the fee required by the ATC from those of their agents who are also IATA approved.

M/410 ALI stated that the Entrance and Agency Fees were extremely high for agents in soft currency countries, and requested that the possibility of reduction in fees for these agents be studied by the Agency Committees. In principle, the Conferences did not approve of such discrimination, but agreed that the matter be studied.

M/411 SAS stated that they still preferred to see the practice of collecting fees from agents abolished altogether.

M/412 BEA suggested that if Agency Fees were to be retained, a token reduction should be made. This Member pointed out that agents had been told that fees were collected to cover agency administration and the cost of bonding. However, they were aware that the bond had been cancelled, and expected a reduction of the fee. This view received little support. Attention was drawn to the fact that a substantial reduction was made following the Nice Meeting Conferences, and although the previous bonding scheme no longer seemed practicable, other methods of protection were being studied. It was agreed, however, that a letter explaining the present position and purpose of the Agency Fees should be drafted and circulated to agents.

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Commission on Prepaid Business

M/413 The Conferences considered the proposal made by Air France that a handling fee should be paid to the handling agent on prepaid business involving two agents. This Member explained that it had been approached by numerous agents suggesting that airlines adopt the same practice as shipping companies. In their view, traffic was being diverted to surface transportation because agents received handling fees.

M/414 On a point of clarification, it was confirmed that on sales handled through two offices of the same agency enterprise, no handling fee would be payable.

M/415 A motion to permit payment of handling fees was defeated and it was decided to refer the matter to the Committees for further study.

M/416 PAL informed the meeting that they would request the Agency Committee of Conference 3 to study the situation in Manila where carriers had been approached by agents suggesting that both Members and agents charge 25 pesos whenever they are required to take care of a passenger's documentation. PAL stated that although shipping companies in Manila followed this practice, this Member did not feel it was necessary for air carriers to introduce similar procedures. This view was supported.

Consolidated Form of Application for Cargo Sales—Resolution 160/810b

M/417 Traffic Conference 1 accepted a revised form of agency application for cargo sales as at Resolution 160/810b. This new form was recommended by the Agency Committee of Conference 1 and represented the results of study conducted to determine the information required from an applicant in order to evaluate his ability to handle air cargo traffic.

M/418 Members of Traffic Conferences 2 and 3 stated that they were not prepared to accept the new form until it had been studied by the respective Agency Committees.

Form of Agency Application, Combined Passenger and Cargo Sales—Resolution 810c

M/419 The Conferences agreed that this form served no useful purpose and Resolution 810c was rescinded.

Modification of Verbatim Clause in all Forms of Agency Application

M/420 The recommendation of the Composite Agency Group was adopted unanimously by the Traffic Conferences as at Resolution 810a.

Inclusive Tours—Resolutions 810d and 810e

M/421 The Composite Agency Group expressed the opinion that the principles on which the present Inclusive Tour Rules are based are unsound, and recommended that the Conferences set up an Ad Hoc Committee consisting of

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[fol. 4461] agency and fares experts to study the whole question and formulate more simple rules. The Group felt that contrary to the fundamental principles of the Inclusive Tour Program, under which Members should prepare to grant tour operators additional commission in order to promote this type of traffic, it was found that considerable volume of normal traffic is being diverted and qualified as extra commission traffic. The Conferences accepted the Group's recommendation and created the following Committee to study Inclusive Tour questions and to report before the next meetings:

J. M. Bamford —Air France
J. R. Barch —Trans World Airlines
J. W. Croes —KLM Royal Dutch Airlines
J. L. Grumbridge—British European Airways
H. Heim —Pan American World Airways
A. Honne —Scandinavian Airlines System
J. H. Mahoney —American Airlines

M/422 For purposes of clarification, Traffic Conference 1 agreed to an amendment of Resolution 810d (Inclusive Tours Initiated by Members) reading as follows:

"The provisions of this resolution shall apply only to tours sold within the area of Traffic Conference 1 for transportation wholly within that area."

M/423 The present Resolution 260/810e covering Inclusive Tours Initiated by Producers in Conference 2 allows a discounted fare instead of commission in Europe. The Middle East Working Group had recommended that this facility be extended to the Middle East. The Conference was not disposed to permit inclusive tour facilities between Europe and the Middle East but agreed to extend the application of the resolution to transportation wholly within the

area of the Middle East and also between Cyprus and Greece. Resolution 280 810e was adopted giving effect to this decision.

Implementation of Resolutions 810i and 810j

M/424 It was agreed that applications from General Sales Agents of non-IATA carriers for exemption from the provisions of Resolution 810j should be referred to the Agency Committees for action.

M/425 The Secretary of Conference 3 was requested to send a letter to all agents of Conference 3 informing them that they are now subject to Resolutions 810i and 810j. The form of the letter to be sent should be similar to that already sent to agents in Traffic Conferences 1 and 2.

M/426 At an individual meeting of Traffic Conference 2 a letter from the International Federation of Charter Operators (FITAP), asking certain questions relating to the application of Resolutions 810i and 810j, was con-

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[fol. 4462] sidered. The letter asked what criterion would be used by the Conferences in maintaining or withdrawing IATA approval of General Sales Agents of non-IATA companies. The Conference was of the opinion that each case should be judged individually and on its own merits.

M/427 FITAP also asked for a definition of "General Sales Agents" and "Approved Sales Agent." The Conference was of the opinion that the term "General Sales Agent" was well-known in the trade and did not require definition. However, the principal difference between the two was that a general sales agent supervised the activities of sales agents on behalf of a carrier.

M/428 In answer to another question, the Conference confirmed that an approved sales agent, when appointed as a general sales agent, ceased being an approved sales agent.

M/429 In replying to a further question concerning approval by governments of IATA resolutions, it was suggested that FITAP refer to national carriers of each individual country for the information they require.

Form of Passenger and Cargo Sales Agency Agreements—Resolutions 820 and 821

M/429 The Conferences agreed that the form of Sales Agency Agreements should be amended to permit carriers and IATA Enforcement Officers to inspect an agent's records relating to the sale of air transportation offered by a carrier. It was also agreed that IATA Enforcement Officers should be given adequate opportunity to interview and gain information from any officer or employee of an agent whom the Enforcement Officer has reason to believe is in possession of information concerning a complaint under investigation.

Agency Interline Agreements with non-IATA Carriers—Resolution 851

M/430 This resolution was amended to reflect the new provisions agreed upon by all Conferences in Section M(3) of Resolution 810 relating to the limitation on payment of commissions. CPAL abstained for the same reasons as recorded under Minute 395.

Reduced Fares for Agents—Resolution 203

M/431 Several carriers opposed the recommended liberalization of Resolution 203 permitting group travel of agents for educational purposes. One Member felt that it would create an unfair situation for small carriers and another Member expressed the view that tourist organizations and hotels should be called upon to meet a portion of expenses.

M/432 SAS stated that in Scandinavia, local tourist organizations were unable to contribute the necessary funds and that surface carriers granted rebates to groups of agents on educational tours. PAA felt that the two annual

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[fol. 4463] passes permitted under the present resolution were intended for the purpose of educating agents and this Member could see no reason for further liberalization.

M/433 A motion to adopt the agency group's recommendation in all areas failed. However, Traffic Conference 2

adopted this resolution as at 280 203b applicable only to European agents for tours formed wholly within Europe. BEA, Cyprus Airways, PAA and TWA abstained from voting.

M/434 PAA proposed that Resolution 203 be amended to prohibit granting of transatlantic free and reduced rate transportation to agents during the high traffic season. This Member suggested that agents, requesting free and reduced transportation during the on-season, imply that a refusal might lead to a diversion of their business to other Members more amenable to allowing such transportation. This proposal received no support.

M/435 Air France informed the meeting that ASTA had been invited to hold their next convention in Paris, and this Member had been requested by the Official French Tourist Organization to grant free or reduced transportation to members and allied members of ASTA.

M/436 The majority of Members were opposing in principle to the granting of free or reduced transportation to allied members of ASTA and felt that normal members should use their annual free tickets for the purpose of attending the Paris convention.

Rules for Participation by Members in Conventions of Travel Agents

M/437 The Composite Agency Group reported that there was a tendency on the part of organizers of travel agency conventions and similar functions to impose upon Members' hospitality. To protect Members, the Group recommended the adoption of rules to govern the participation in conventions and functions of travel agents. NAL explained that a similar resolution had been passed by the Air Traffic Conference of America because the ATC Members found that they were required to pay a large portion of expenses at such conventions. In the opinion of this Member, IATA carriers should adopt similar protective rules.

M/438 The Conferences accepted the Agency Group's recommendation and adopted Resolution 812 governing

Members' participation in international, national, regional and district conventions of sales agents.

Numerical Code of Countries, Currencies, Cities and Agents

M/439 The Conferences were in favor, in principle, of applying the numerical code developed by the IATA Clearing House and Revenue Accounting Sub-Committee to agents as proposed by KLM. It was recognized that administrative machinery would be required to implement this scheme and until this work is completed, it would not be possible to decide the date of introduction of the code.

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General Sales Agency Appointments

M/440 *Traffic Conference 1*

Socca, 2a, Avenida Norta 11
San Salvador, El Salvador

In the absence of full details regarding the appointment of this agent by SABENA, no action was taken by the Conference.

M/441 *Traffic Conference 2*

The following Sales Agents appointed as General Sales Agents were authorized to receive commissions for sales over the lines of all Members:

(i) Jules Boutin Travel Bureau Ltd., Dinard, France
Appointed by Air France

(ii) Societe d'Exploitation de l'Aeroclub du Touquet, Le Touquet, France—Appointed by Air France

(iii) Karnak Syrian National Tourist and Transport Co., Ltd. Damascus, Syria—Appointed by BOAC

(iv) Mitchell Cotts & Co.—Aden
Appointed by Air India International

(v) Scottish Aviation, Ltd., Prestwick, Scotland
Appointed by Hellenic Airlines

(vi) Dwyer and Co. (Iraq) Ltd.
Appointed by KLM

(vii) Peltours—Tel Aviv, Israel
Appointed by Cyprus Airways
KLM & SAS abstained from voting.

M/442 *Traffic Conference 3*

Forbes, Forbes and Campbell & Co., Ltd.,
Bombay and Karachi—Appointed by Air Ceylon

It was decided to defer action on the application submitted by Air Ceylon in order to be given an opportunity to submit the necessary details why it was desirable to extend such authority to their general sales agent.

M/443 China Travel Service, China—Appointed by PAL

It was decided to defer action until the political situation in China clears.

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M/444 Messageries Maritimes, Singapore and Malaya
Appointed by Air France

The Conference unanimously voted in favor of granting authority to this company. PAA abstained from voting.

M/445 Warner, Barnes & Co., Ltd., Manila
Appointed by BOAC, CPA and QEA

Authority was granted to this agent for a period of twelve months subject to review by the Agency Committee and the Traffic Conference.

Agency Matters—Traffic Conference 3

Relationship with Air Transport Association of India

M/446 The Conference endorsed the recommendation that a joint meeting of the Karachi AIB and the ATA be arranged to discuss the matters suggested by the Agency Committee. The latter will not act on any recommendation forthcoming from such meeting except in consultation with the Conference Chairman.

Membership of AIBs and Attendance at AIB Meetings

M/447 The Conference expressed the opinion that only full-time regular employees of Members will attend AIB meetings.

Directive to AIBs

M/448 The Conference noted that the Agency Committee had amended the Directive to AIBs to the effect that only representatives of Members of Traffic Conference 3 can attend AIB meetings as voting delegates. The Conference was in agreement with this interpretation as it considered the AIB to form a part of the Conference machinery. One Member wished to reserve his position.

Confidential Nature of AIB Reports

M/449 The Conference strongly supported the viewpoints of the Agency Committee that AIB reports are confidential and should only be divulged to Members.

M/450 The Conference adopted the recommended procedure that any Member or its employee(s) aware of such violations would be called upon to disclose the name of the offender. The Secretary will inform Members of the Agency Committee, which will consider the report at its next meeting with the view to adopt a vote of censure and decide upon disclosure to the employing airline in order that the latter may take the disciplinary action it deems required.

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Hong Kong AIB

M/451 The Conference commended the Members of the Hong Kong AIB on their efforts to clarify and improve the agency situation in Hong Kong.

MISCELLANEOUS AGENCY ITEMS

Air Tour Construction Fares—Resolution 160/810g

M/452 This resolution, proposed and drafted by Pan American World Airways forms part of the undertaking to reflect existing fares and conditions in the closing of

Conference 1 fares and rates. The Resolution 160/810g, applicable only in Traffic Conference 1, authorizes Members to set up limited validity circle, round-trip and open-jaw tours at a 25% discount (first class or tourist) to include specified tour features on which agent's commission is payable. The total cost of the air tour construction fare must not exceed the base fare and children's reductions are not allowed.

INTERPRETATION OF CERTAIN PARAGRAPHS OF RESOLUTIONS 800 and 810

M/453 Pan American World Airways requested consideration of this item by the Conferences and referred to a recent decision made by a Commission created under Article XII of the Provisions for the Regulation and Conduct of Traffic Conferences.

M/454 Since the Chairman of the Composite and Joint Meetings had been a Member of this Commission, the Chairman of Traffic Conference 2 was requested to take the chair during the discussion of this item.

M/455 PAA raised the question whether a Member, having an appointed General Sales Agent in a given territory, is required to execute Sales Agency Agreements with every agent in that territory in addition to the agreements which the General Sales Agent makes with these agents. In their opinion, such duplication of Sales Agency Agreements was not required.

M/456 Several carriers thought it was necessary only to have a Sales Agency Agreement in the name of that Member acting as General Sales Agent, otherwise, the administrative problem would be enormous.

M/457 The Legal Drafting Officer, whose opinion was sought, stated that the apparent thought behind Resolution 810 was that every agent with whom a Member, directly or indirectly, is doing business must have an Agency Agreement in a certain form covering every phase of the relationship between the principal and the agent. He considered it a good principle to authorize Members acting as

General Sales Agents to appoint Sales Agents, and as far as IATA is concerned if a Sales Agent has signed an IATA Standard Sales Agency Agreement he thereby comes under the Association's control.

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M/458 British European Airways stated that in their opinion an IATA Member was responsible for the acts done under his name and on his behalf by his agents, including his General Sales Agents. An IATA Member appointing a General Sales Agent, whether a Member or not, would do so in the form of an agreement, and the General Sales Agent would then be compelled to observe all IATA resolutions, including the execution of written agreements with all the Sales Agents it appoints. If the Sales Agency Agreement is violated, and the original Member thereby sustains damage, the carrier should have recourse against the General Sales Agent who has failed in his obligation.

M/459 A proposal was made that the matter be submitted to the Legal Committee, and during the ensuing discussions a show of hands was taken as to whether a Member should be held liable in cases where his General Sales Agent, who is also an IATA Member, fails to execute written agreements with Sales Agents. Nine Members felt that the appointing Member would be held liable and seven Members were opposed to this view.

M/460 The Conferences agreed to refer the question to the Legal Committee and endorsed the Chairman's opinion that the intent of the resolution should be clarified in such a manner as to avoid misinterpretation and to permit proper enforcement.

REPORT OF THE MIDDLE EAST WORKING GROUP

M/461 The report of the Middle East Working Group was considered at an individual meeting of Traffic Conference 2.

M/462 The general questions raised under the heading of "Problems of the Small Operators in the Middle East" were referred to the Traffic Committee with the request that they be considered at its London meeting so that early action by the Conference may be taken.

M/463 The Executive Committee was requested to consider the MEWG papers concerning its terms of reference, Conference dues, and the Group's views regarding the creation of local airline panels.

M/464 The Conference believes that the creation of panels should be encouraged and that these panels should consist of local representatives or district managers who would not have executive powers. Recommendations on local problems would be made to head offices of Members who would then take up questions through already-established IATA Committees. Such panels should not be regarded as part of the official IATA machinery.

M/465 The view was expressed that action on terms of reference for the MEWG and on the creation of panels was not required as urgently as the general question of the small IATA carrier in the Middle East. Furthermore, it was suggested that there might be advantage in permitting the situation to develop of its own accord before setting up governing rules and procedures.

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M/466 The Conference felt that the revised Resolution 021 which would become effective in October 1951 would overcome the currency difficulties at present being experienced in the Middle East.

M/467 With reference to the particular situation in Lebanon, the Secretary was requested to arrange for a meeting of the local representatives in the Middle East as soon as possible with a view to agreement being obtained on the basis of the revised resolution.

M/468 The Conference recorded that sympathetic consideration should be given to requests from Middle East Regional Operators for exemptions under paragraph 4 of the General Sales Agency Resolution 800.

M/469 The Agency Committee of Traffic Conference 2 were requested to examine the possibility of new applicants seeking IATA agency approval being granted temporary certificates through Agency Investigation Boards. The Conference sympathized with the proposal provided it

avoided delays in agency administration and could be applied within the terms of the existing resolution. Cases were quoted where agents in the Middle East approached Members with a view to breaching resolutions. It was recommended that AIBs be notified of such approaches by agents so that all Members may be placed on their guard. The Agency Committee was requested to examine this matter and also the possibility of withdrawing IATA agency approval in those cases where unsuitable business practices are proven.

M/470 Resolution 280/105 was adopted to prevent the practice of passengers and agents receiving money in lieu of ground transportation.

M/471 MEWG recorded a proposal that commission on passenger transportation in the Middle East be increased from 5% to 7½%. This proposal was rejected unanimously.

POSTAL MATTERS

Standardization of Distances for Postal Purposes—Resolution 655

M/472 The Chairman of the Conference called upon Mr. Dolby, the Chairman of the Postal Sub-Committee of the Traffic Committee to explain how the "Yellow Book" of standardized postal distances had come into being. Mr. Dolby explained the arguments and the processes leading up to the formula on which the table of standardized distances had been drawn up. The object had been to maintain as closely as possible the existing cost to postal administrations and the existing revenue to air carriers.

M/473 Some European Members objected to the Yellow Book on the grounds that:

(i) the use of standard distances rather than the distances for the routes travelled by the mails would give rise to accountancy problems as it would be difficult to teach the Post Office how to pro-rate the revenues between carriers;

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(ii) the UPU would not accept the use of a different percentage increase on the great circle distances in different areas of the world and would require a standard percentage increase for worldwide application;

(iii) the use of a twice weekly frequency as a minimum resulted in unduly inflated figures in some cases.

They suggested the establishment of a Committee to work out an alternative proposition.

M/474 The Director General pointed out that in postal matters IATA was fighting what might be regarded as a rearguard action. The Yellow Book was one phase of this action. If the carriers could not agree on standard distances, the Post Offices were likely to decide the distances for them and they could not expect that the distances established unilaterally by the Post Offices would be to their liking. The Yellow Book might not be perfect, but it was the best proposition that IATA had been able to produce.

M/475 The European carriers, who had objected to the Yellow Book stated that they were willing to cooperate in its submission to the UPU, but that the Members should agree on an alternative proposition in case the Yellow Book is rejected.

M/476 Other Members pointed out that it was impossible to produce distances which would satisfy all Members and all Post Offices. Members' postal experts had spent much time on producing the Yellow Book and the Conferences should give it their backing.

M/477 The point was made that Members had a strong case for asking the UPU to accept the Yellow Book because it represented the continuance of the present level of payments by the Post Offices. The UPU had asked the carriers to standardize distances and any other proposition would cost carriers money.

M/478 A vote showed that 30 Members favored acceptance of the Yellow Book, 2 were opposed while 4 abstained. Both dissenters stated that they supported the objectives of the Yellow Book but opposed it in matters of mechanics.

M/479 The Chairman pointed out the importance of reaching agreement in this problem which involved 20-30% of carriers' revenues and appointed a Committee under Mr. Dolby to study the points which had been made and to report back to the Conferences.

M/480 The Chairman of the Committee on Postal Distances presented his report, and outlined the points which had been discussed by the Committee. In particular he drew attention to the Committee's recommendation that application of through distances should not be restricted to single

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[fol. 4470] carrier service. This would mean that the list would have to include the distances between any two points in the world between which closed mails were exchanged. The list would, therefore, have to be amplified as soon as possible on the basis provided for in paragraph 2 of the proposed resolution.

M/481 The question was raised as to when the distances would become effective. It was stated that, once the UPU had accepted them, the Postal Administrations would be asked to put them into effect immediately.

M/482 The question was also raised as to how the distances would be applied in the case of indirect routings. It was indicated that the choice of routes was a matter to be decided by the Postal Administrations and that the carriers concerned would have to establish prorates for the routings chosen by the administration. The Conferences considered that machinery would have to be set up to work out the accountancy side and they requested that for this purpose a Working Group should be established comprising accountancy people from the following Members: BEA, AF, SAS, PAA, TWA and KLM.

M/483 After drafting amendments had been made, the resolution submitted by the Committee was adopted as at Resolution 655 by all the Conferences and Joint Meetings with the following abstentions: Conference 2: QEA, Conference 3: CPA, BCPA, QEA, TEAL, Joint 23: QEA, Joint 31:BCPA, CPA, QEA, Joint 123: QEA, BCPA, CPA. This resolution would be taken by Mr. Dolby to the St. Gall Meeting of the UPU.

M/484 The Conferences recognized that agreement to use specific distance figures was only part of the postal problem confronting Members and that there was also need for an IATA resolution which would bind Members to quote specific rates.

M/485 The Director General pointed out the difficulties of the U.S. carriers with respect to Conference action on postal rates. He said that IATA was trying to create law and order by degrees. The Postal Administrations had wanted distances, so a start had been made with distances. However, it was hoped in due course to overcome the difficulties with respect to action on rates.

M/486 Attention was drawn to the fact that the interpretation of that part of the resolutions of UPU/IATA Meeting in Cairo which dealt with the application of a single basic rate to replace combination rates had not yet been properly resolved. In such an uncertain situation, there was a considerable danger of rates being undercut. Attention was also drawn to the fact that the 3 and 6 gold franc rates for "A" and "B" routes were referred to in the Cairo resolutions as "maxima," whereas from the carriers point of view they should be regarded as "minima." It was suggested that the Conferences should cover these points by a resolution.

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M/487 The meeting felt, however, that there would be no objection to the Conference adopting a resolution which would express approval of the Cairo resolutions, would provide for a literal interpretation of their provisions respecting combinations, and would provide for Members considering A and B category rates as minima. The U. S. carriers would have to abstain and leave to their Government the final decision whether they should be directed to act in conformity with this resolution.

M/488 The Conferences and the Joint Meetings thereupon adopted Resolution 652 with the following carriers abstaining: PAA, TWA, PANAGRA, NORTHWEST, NATIONAL, AMERICAN, UNITED, BRANIFF, CHICAGO

& SOUTHERN, BCPA, CPA, QEA, PAL and AIR FRANCE.

M/489 At a later stage of the meeting, the Director General read a cable received from M. Briend to whom he advised the text of Resolution 652. This resolution had been presented to the Executive and Liaison Commission of the UPU and M. Briend cabled informing the Conference that the resolution would probably be acceptable if IATA agreed a reduction to five gold francs.

M/490 The Conference would not consider any question of an immediate reduction. A suggestion that Conference adopt a resolution freezing the Category "A" area was not developed because it was considered that it would be inadvisable to adopt a further resolution on such a complex problem at this stage of the meetings.

M/491 The feeling was that if the Executive and Liaison Commission would not accept the Conferences' interpretation of the Cairo resolution with respect to the application of the 5.25 gold franc rate, there was no alternative but to revert to pre-Cairo-conditions and let combinations continue. In these circumstances it was emphasized that, if Postal Administrations should approach any Members to extend the Category "A" area or to allow combinations to be applied where they had not been applied prior to Cairo, such approaches must be met by all Members with a firm refusal.

RESOLUTIONS OF THE THIRD INTERNATIONAL CONGRESS OF AFRICAN TOURING

M/492 The Conferences made no comment on the resolutions adopted by the Third International Congress of African Touring. These resolutions were referred to IATA by the President of the Alliance International de Tourisme under whose auspices the Congress was convened.

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ANY OTHER BUSINESS

M/493 Time did not permit full discussion on the paper submitted by KLM regarding the scheduling of Conference

meetings. It was agreed, therefore, that Members should submit their comments to IATA Head Office, Montreal, to permit full consideration to be given to this question before the next meeting. KLM's views were circulated to all Members under cover of their letter HAG/TAR.611/Cr/PW of April 20, 1951.

CONFERENCE ADMINISTRATION

Filing of Special Event and Creative Fares with Civil Aeronautics Board

M/494 Traffic Conference 1 agreed that the Secretary of Conference 1 should file creative and special event fares with the CAB on behalf of U. S. carriers.

Conference and Enforcement Office Budgets

M/495 Conferences 1, 2 and 3 approved budgets for 1951 as at Appendices "H" to "K". These budgets included appropriations for the Enforcement Office (Appendix "K"). In this connection it was noted that collections from fines imposed would be credited in the first place to the Conferences against the expenses chargeable to it by the Enforcement Office.

M/496 In the event of there being no meeting in the Autumn of 1951 the Conferences authorized the Treasurer to assess Members for 1952 dues in the same amount as for 1951. The Conferences also agreed that this method of assessment may be regarded as an automatic procedure and that it should not be necessary in the future for the Treasurer to seek interim powers.

M/497 The Conferences noted that a special reserve had been created for funds derived from the collection of agency fees and that the Treasurer had asked for suggestions as to how these funds should be used. One Member believed that it should be used to continue efforts to secure a bond. Other Members were opposed to bonding and suggestions were made that funds should be used to reduce fees for small operators or generally to reduce Conference dues.

Method of Assessment of Conference Dues

M/498 Conferences 1, 2 and 3 adopted unanimously the following method of assessment of Conference membership dues to commence with the 1951 assessment:

(a) One-third of Budget Expenses Assessable to Members to be shared equally by all Conference Members, with non-voting Members paying one-half of the share of the voting Members;

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(b) Two-thirds of Budget Expenses Assessable to Members, to be apportioned to all active Members in direct relation to their international scheduled mileage in operation within the Conference area, for the months of March and September of the preceding year according to the following scale of discounts to be applied to any international scheduled mileage in excess of 10% of the total mileage reported by all Members of the Conference:

The	proportion	for	the	1st	10%	of	total	scheduled	mileage	—	100%
"	"	"	"	2nd	10%	"	"	"	"	—	80%
"	"	"	"	3rd	10%	"	"	"	"	—	60%
"	"	"	"	4th	10%	"	"	"	"	—	40%
					All	mileage	thereafter			—	20%

(c) All assessments to be computed to the nearest U.S. dollar;

(d) To calculate the international scheduled mileage, the IATA definition of "International Air Services" shall apply except that the measurement from (or to) the country of the reporting carrier shall commence (or terminate) at the normal gateway point (see note). In the case of carriers flying in an Easterly or Westerly direction, the distances are to be calculated to the border line of the Conference areas as set out in the master map on file with the Director General and referred to in Section I of the Provisions for the Regulation and Conduct of the Traffic Conferences of IATA;

(e) New and resigning Members shall be charged on a monthly pro-rata basis (to the nearest full month).

In the event that a new Member had no international scheduled mileage for the base period, its mileage shall be based on the first two complete months of operation within the Conference area regardless of whether or not the carrier was Member of a Conference at the time the operations commenced; or if the first complete month of operation should fall between March and September of the year for which the scheduled mileage figures are normally reported the mileage should be based upon the first complete month of operation together with the month of September;

(f) Adjustments in the Conference billings shall be made at the end of the year to give effect to new and resigning Members' assessments as outlined in (e), above;

(g) The calculation of the international scheduled mileage figures mentioned in (d) above, shall be made by

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[fol. 4474] the Conference Members and shall be submitted to the Conference Secretary not later than December 31st of the year for which scheduled mileage figures are reported. If the figures are not in the hands of the Secretary by that date, the Secretary is authorized to calculate the figures himself. The Members which have not submitted their own figures must accept the calculations made by the Secretary as the basis for the assessment of the dues.

Note: A "gateway point" means the last scheduled traffic stop within the boundaries of the operator's state on a flight from a foreign country destined to the operator's state. For the purpose of defining "gateway point", however, in the case of flights destined for a foreign country from the operator's state or return from a foreign country to the operator's state by way of territory subject to its sovereignty, suzerainty, protection or mandate, "State" shall mean the Metropolitan State or mother country only.

Unpaid Conference Dues

M/499 At the Bermuda meetings in November 1948, the Conferences agreed that new and resigning Members should be charged Conference dues for the broken portion of the year in which they join IATA or resign from IATA on a monthly prorate basis to the nearest full month. In order to simplify the settlement of the resigning Members' dues, both for the year of resignation and for any prior year, the Conferences approved the following procedure which had been suggested by the Treasurer.

(i) In the event of a Member's resignation, the Treasurer is authorized to charge such Member, in final settlement of Conference dues for the year of resignation, a share of the Conference budget or Conference budgets with which the Member is concerned, computed in the manner in which agreed by the Conferences;

(ii) If such Member has not paid the Conference dues for the year of resignation, and/or dues for any prior year, by the date when the final expenses for the year of resignation are distributed among Members of the Conference, the Executive Committee may authorize the Treasurer to cancel both the original assessment for the year of resignation and any other outstanding assessments, to exclude such Member from the assessment of the final expenses of the Conference or Conferences concerned for the year of resignation, and to charge the other Members of the Conference or Conferences concerned for any unpaid assessments pertaining to prior years together with and in the same manner as the final expenses of the year of resignation;

[fol. 4475] —99—

(iii) Any amount written off according to the above procedure and subsequently collected shall be used to reduce the expenses of Conference or Conferences concerned in the year when such collection is made.

Apportionment Between Conferences of Costs of this Meeting

M/500 It was agreed that the cost of this meeting would be divided in the following proportions:

Conference 1—2 parts
Conference 2—2 parts
Conference 3—1 part.

Election of Officers to take Office as from the Closing of the 1951 General Meeting

M/501 The following officers were elected:

Traffic Conference 1:

Chairman	—	R. Ireland
1st Vice Chairman	—	J. Shannon
2nd Vice Chairman	—	W. Sternberg

Traffic Conference 2:

Chairman	—	J. W. S. Braneker
1st Vice Chairman	—	F. von Balluseek
2nd Vice Chairman	—	L. Schoevaerts

Traffic Conference 3:

Chairman	—	B. L. Anderson
1st Vice Chairman	—	A. W. Gill
2nd Vice Chairman	—	C. W. Budd

Date and Location of Next Composite Conference Meetings

M/502 In view of the uncertainty as to whether or not an Autumn meeting would be required it is felt that a definite choice of location could not be made.

Press Release

M/503 A Press Release, as at Appendix "L", was prepared by a Drafting Committee and approved by the Conferences.

Votes of Thanks

M/504 A vote of thanks to the Chairman, Mr. Deichler, for his able and patient handling of the meeting was moved by PAA and unanimously endorsed by all Members. The Members also thanked the Chairmen of the FRCS and Agency Committees, the Ad Hoc and Working Groups and the Secretariat for their contribution in making the meeting a success.

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APPENDICES

to

MINUTES

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Appendix "A"
to
Minute M/2

IATA TRAFFIC CONFERENCE RULES AND PROCEDURES

Purpose

1. The purpose of the IATA Traffic Conference Rules of Procedure is to ensure that the business of each meeting will be conducted as quickly, efficiently and in as orderly a manner as possible.

Chairman

2. The Chairman, as the presiding officer of the meeting, shall be responsible for:

(a) maintaining order;
(b) protecting the rights of all representatives; and
(c) seeing that business is properly brought before the meeting and acted on.

3. The Chairman shall conduct the meeting impartially. Normally he will confine himself to statements of fact. If he wishes to express a personal opinion, he shall appoint a temporary Chairman and not resume the chair until the matter under discussion has been decided.

4. The Chairman shall rule out of order all remarks that are not relevant to the matter under discussion.

Members

5. No person shall speak without first obtaining recognition from the Chairman.

6. All remarks shall be made to the Chairman and not to the meeting or to any other person.

7. Only one representative (as well as one interpreter, if used) of each Conference Member shall sit at the Conference table, and, unless otherwise permitted by the Chairman, only one adviser or alternate shall sit immediately behind him.

8. The Chairman shall ensure that all statements are expressed in a clear and audible voice.

Agenda

9. Action shall be taken on matters which have been clearly and fully noticed on the Agenda for action.

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10. Business will be taken up in the following order:

(a) Meeting called to order by the Chairman;
(b) Minutes of previous meeting approved;
(c) Committee Reports received and acted on;
(d) Unfinished business acted on;
(e) New business acted on;
(f) Budget matters;
(g) Election of officers;
(h) Date of next meeting; and
(i) Meeting adjourned.

11. In order that available time shall be utilized efficiently, the Chairman may impose in advance a time limit for each item of the agenda or for each speaker.

Motions

12. Matters shall not be debated or discussed unless:

(a) a written proposal has been filed with the Secretary; and

(b) the matter has been proposed in the form of a motion by one person and seconded by another.

13. A motion once decided shall not be reconsidered, unless upon consent of all the representatives present and voting.

14. The Chairman may entertain at any time in his discretion a motion to "put the question" under consideration; if such a motion is carried by a majority of the representatives present and voting, the question shall be voted upon forthwith.

Amendments

15. Amendments that are relevant to the motion under discussion may be proposed and seconded; if adopted, the amendment shall be incorporated into or substituted for the motion.

16. The Chairman shall not accept any amendment to a motion that has the effect of completely nullifying the motion.

17. An amendment to an amendment may be proposed, but no more than two amendments to the same motion shall be before the meeting at one time.

18. In the event of general consent, amendments may be adopted without a formal vote.

19. Amendments may be proposed verbally during the discussion; provided that the Chairman may, in his discretion, require the proponent to make written presentation thereof.

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20. Amendments shall be voted on in the reverse order in which they have been made; e.g. where a motion, followed by Amendment A, then Amendment B, has been made, the order of voting will be:

(a) Amendment B;
(b) Amendment A (as modified by Amendment B);
(c) The motion (as modified by Amendments B and A).

Voting

21. The Chairman will restate the motion before putting it to a vote. If he should not do so, a restatement may be requested by any representative.

22. Procedural motions shall be adopted by a majority vote of the representatives present and voting. Substantive motions (i.e. motion intended to result in binding Conference action) shall be by unanimous vote, except as otherwise stated in the Traffic Conference Provisions.

23. Normally the Chairman will not vote. But, if he elects to cast his company's vote, he shall explain the reasons for so doing.

24. Motions shall be acted upon in the order in which they appear on the agenda. The voting on one motion shall not be delayed pending action on another, unless the subject matter of both are definitely inter-related.

Punctuality

25. Meetings, including all sessions thereof, shall commence promptly on time or as soon as the quorum (one-third of the Conference Members) has been assembled.

Committee Reports

26. Due weight shall be given to all recommendations contained in Committee or Sub-Committee reports. Where the vote in the Committee or Sub-Committee has been unanimous or by a strong majority, the Chairman shall endeavor to avoid any discussion of the subject.

Legal Interpretations

27. Representatives may request legal interpretations of the L.D.O., but these shall have only the weight of his personal opinion and shall not be binding in subsequent arbitration proceedings.

Adjournment

28. Meetings shall be adjourned upon a unanimous vote of the representatives present and voting.

Working Hours and Duration of Meetings

29. The working hours and duration of meetings shall be as unanimously agreed.

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Appendix "B"
to
Minute M/6

DETERMINATION OF VOTING MEMBERSHIP

TRAFFIC CONFERENCE 1

Mr. R. E. S. Deichler — Chairman
— First Vice Chairman
Mr. Johannes Nielsen — Second Vice Chairman

Membership

Voting:

A/B. Aerotransport
Aerolineas Argentinas
Aerovias Guest, S. A.
Aerovias Nacionales de Colombia (AVIANCA)
Air France
American Airlines, Inc.
Braniff International Airways
British Commonwealth Pacific Airlines
British Overseas Airways Corporation
Canadian Pacific Airlines, Ltd.
Chicago & Southern Air Lines
Compania Cubana de Aviacion, S. A.
Det Danske Luftfartselskab A/S
Det Norske Luftfartselskap A/S

Empresa de Viacao Aereo Rio Grandense (VARIG)
IBERIA Compania Mercantil Anonima de Lineas Aereas
KLM Royal Dutch Airlines
Linee Aeree Italiane, S.P.A.
Linea Aerea Nacional
Linea Aeropostal Venezolana
National Airlines, Inc.
Northwest Airlines, Inc.
Panair do Brasil, S. A.
Pan American-Grace Airways (PANAGRA)
Pan American World Airways, Inc.
Philippine Air Lines
Servicos Aereos Cruzeiro do Sul, Ltda.
Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA)
Trans-Canada Air Lines
Trans World Airlines, Inc.
United Air Lines

Non-Voting:

Eastern Air Lines

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DETERMINATION OF VOTING MEMBERSHIP

TRAFFIC CONFERENCE 2

Mr. J.W.S. Braneker — Chairman
Mr. M. Stuart-Shaw — First Vice-Chairman
Mr. P. Beck Nielsen — Second Vice-Chairman

Membership

Voting:

A. B. Aerotransport
Aer Lingus-Teoranta
Aerolineas Argentinas
Aero O. Y.

Aero Portuguesa, Ltda.
Air Ceylon, Ltd.
Air France
Air India International, Ltd.
Air Liban
Avio Linee Italiane Flotte Riunite, S. A.
British European Airways Corporation
British Overseas Airways Corporation
Central African Airways Corporation
Ceskoslovenske Aerolinie
Cyprus Airways, Ltd.
Det Danske Luftfartselskab A/S
Det Norske Luftfartselskap A/S
Divisao de Exploracao dos Transportes Aereos (DETA)
East African Airways Corporation
El Al, Israel National Airlines
Flugfelag Islands, H. F.
Greek Airlines, TAE
Hellenic Airlines, S. A.
IBERIA Compania Mercantil Anonima de Lineas Aereas
Iraqui Airways
Jugoslovenski Aerotransport JAT
KLM Royal Dutch Airlines
Linee Aeree Italiane, S.P.A.
Misrair, S.A.E.
Panair do Brasil, S.A.
Pan American World Airways, Inc.
Philippine Air Lines
Polish State Airlines (LOT)
Qantas Empire Airways
Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA)
South African Airways
Swiss Air Transport Co., Ltd.
Trans World Airlines, Inc.
Transportes Aereos Portugueses—TAP
West African Airways Corporation

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DETERMINATION OF VOTING MEMBERSHIP

TRAFFIC CONFERENCE 3

Mr. B. L. Anderson — Chairman
Mr. A. W. Gill — First Vice Chairman
Mr. C. W. Budd — Second Vice Chairman

Membership

Voting:

A. B. Aerotransport
Air Ceylon, Ltd.
Air France
Air India International, Ltd.
British Commonwealth Pacific Airlines
British Overseas Airways Corporation
Canadian Pacific Airlines, Ltd.
Det Danske Luftfartselskab A/S
KLM Royal Dutch Airlines
New Zealand National Airways Corporation
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Philippine Air Lines
Qantas Empire Airways
Tasman Empire Airways
Trans World Airlines, Inc.

Non-Voting:

Indian Overseas Airlines, Ltd.

Appendix "C"
to
Minute M/6

DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL AIR TRANSPORT SERVICES BETWEEN THE AREAS OF CONFERENCES 1 and 2

A. B. Aerotransport
Aerolineas Argentinas
Aerovias Guest, S. A.
Aerovias Nacionales de Colombia (AVIANCA)
Air France
British Overseas Airways Corporation
Compania Cubana de Aviacion, S. A.
Det Danske Luftfartselskab A/S
Det Norske Luftfartselskap A/S
El Al, Israel National Airlines
IBERIA Compania Mercantil Anonima de Lineas Aereas
KLM Royal Dutch Airlines
Linee Aeree Italiane, S.P.A.
Panair do Brasil, S. A.
Pan American World Airways, Inc.
Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA)
Swiss Air Transport Co., Ltd.
Trans-Canada Air Lines
Trans World Airlines, Inc.

[fol. 4484] —108—

DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL AIR TRANSPORT SERVICES BETWEEN THE AREAS OF CONFERENCES 2 and 3

A. B. Aerotransport
Air Ceylon, Ltd.
Air France
Air India International, Ltd.
British Overseas Airways Corporation
Det Danske Luftfartselskab A/S
Det Norske Luftfartselskap A/S
KLM Royal Dutch Airlines
Pan American World Airways, Inc.
Philippine Air Lines
Qantas Empire Airways
Trans World Airlines, Inc.

[fol. 4485] —109—

DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL AIR TRANSPORT SERVICES BETWEEN THE AREAS OF CONFERENCES 3 and 1

British Commonwealth Pacific Airlines
Canadian Pacific Airlines, Ltd.
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Philippine Air Lines

[fol. 4486] —110—

DETERMINATION OF MEMBERS OPERATING SCHEDULED COMMERCIAL INTERNATIONAL AIR TRANSPORT SERVICES BETWEEN THE AREAS OF CONFERENCES 1, 2 and 3

Pan American World Airways, Inc.

Appendix "D"
to
Minute M/17

PAN AMERICAN WORLD AIRWAYS

PROPOSED TRANSATLANTIC FARE AND SERVICE POLICY 1951-1952

SUMMARY

1. All-year normal first-class fares to be maintained at existing levels, based on $375 one way between New York and London and 10% discount for round trip.

2. A limited frequency, high density tourist-class service to be adopted on a year-round basis, based on $225 one way between New York and London and 10% discount for round trip.

ALL-YEAR NORMAL FIRST-CLASS FARE

Although there may be some reason for modification of the basic all-year first-class transatlantic fare, there are certain factors which should be considered in discussing any change at this time.

The present fares have generated a satisfactory volume of traffic. A first-class fare lower than $375 between New York and London would result in unnecessary dilution of passenger revenues. On the other hand, it is possible that a higher fare could lead to a loss of traffic to the steamship lines. The present all-year first-class fare is equivalent to 10.87 cents per mile one way and 9.78 cents round trip between New York and London, as compared with an average of 10 cents per mile for typical first-class steamship accommodations for round-trip transportation between New York and Southampton. There is a marked differential insofar as other classes of steamship travel are concerned: six and a half to seven cents per mile on single-class

steamers, six to six and a half cents for cabin-class accommodations, and four and a half to five cents for tourist-class accommodations.* A higher air fare might permit the steamship lines to capture a substantial volume of passenger traffic that otherwise would move by air. Furthermore, the prevailing all-year normal fare by air has gained public and industry acceptance, and any basic change at this time might not be desirable.

An important reason for not increasing the present all-year first-class fare structure lies in Pan American's further proposal to abandon discounts for off-season transportation.

At the present time there are four basic fare levels across the Atlantic during the off-season; e.g., one-way fare, off-season round-trip fare (fare and a third), on-off season round-trip fare, and the special 15-day round-trip excursion fare (fare and a tenth). This fare structure has been needlessly complex and the overlapping periods involved in on-off season transportation, particularly when combined with the fare and a tenth program have caused public

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[fol. 4488] confusion as well as ticketing difficulties and added accounting problems.

The present off-season fare structure has undoubtedly caused diversion from the higher fare level. A passenger questionnaire survey conducted by Pan American between January and March 1951 revealed that at least 65% of the users of the 15-day excursion fare plan would have travelled by air anyway at the higher fare. Furthermore, it is apparent that the 1950-1951 program, which permitted eastbound transportation from September 1 through March 31 (seven months) and westbound from December 1 through June 30 (seven months), with no other limitation on the time of completion of the round trip, involved excessive diversion from full first-class fares. Although on-season transpor-

* Rates given are for standard accommodations on steamer services between the United States and Southampton, as shown in the Official Steamship and Airways Guide, April 1951.

tation covers a period of five months in either direction, there are only two months which coincide as one-season months in the two directions.*

The elimination of off-season discounts would effectively increase the passenger revenue yield, since transatlantic air travel to and from Europe in the winter months is relatively less elastic than at other times of the year. It should be noted that steamship lines currently offer only a nominal reduction for off-season travel, as shown by the following table (fares are between New York and Cobh or Southampton):

Minimum Transatlantic Steamship Fares (Round Trip)

	on season			off season		
	First	Cabin	Tourist	First	Cabin	Tourist
Queen Mary	$750	$470	$340	$730	$450	$330
Ile de France	670	460	340	650	420	330
America	650	440	330	590	400	320
De Grasse	490	372	—	440	352	—

YEAR-ROUND LIMITED FREQUENCY AND HIGH DENSITY TOURIST SERVICE

Although Pan American believes that the prevailing first-class fare, based on $375 one way between New York and London, should be maintained, it is important to realize that a choice of fares is available to most other major overseas destinations, on a *year-round* basis, whereas, transatlantic rates lower than first class have been available only during those periods of the year which are least popular for transatlantic travel. Typical comparisons are shown in the following table:

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* On-season period:
Eastbound—April, May, June, July, August
Westbound—July, August, September, October, November

[fol. 4489]

(From New York Round Trip)

To:	Miles	First Class Fare		Cheapest Available Year Round Fare	
		$ Amount	¢ per mile	$ Amount	¢ per mile
London	6,904	675.00	9.8	675.00	9.8
Lima	7,466	712.00	9.5	539.60	7.2
Honolulu	10,142	588.00	5.8	508.00	5.0

(From Chicago Round Trip)

To:	Miles	First Class Fare		Cheapest Available Year Round Fare	
		$ Amount	¢ per mile	$ Amount	¢ per mile
London	8,352	745.80	8.9	745.00	8.9
Lima	7,902	723.60	9.1	615.45	7.8
Honolulu	8,618	504.20	5.8	458.00	5.3

The transatlantic area, however, is the most heavily travelled to and from the United States and offers an already existent and potential market at least equal to that of all other world areas combined. As shown in detail in Attachment L, a total of 1,071,999 persons travelled between Europe and the United States in 1950, having increased from 611,577 in the prewar period. It should be noted, however, that despite this numerical increase, the relative importance of transatlantic travel has become increasingly less to total overseas travel to and from the United States. During the immediate prewar period it accounted for 57.8% of all travel between the United States and all overseas areas; in 1948, it accounted for only 45.7%; and in 1950, despite the influence of Holy Year and adverse factors which reduced transpacific travel, the proportion was only 49.7%.

It is likewise significant that 68.6% of total transatlantic passengers still travel by boat, as compared, for example, with only 19.9% of combined sea and air passengers be-

tween the United States and all Latin America.* In other words, for every three transatlantic air passengers, there were almost seven transatlantic passengers who travelled by boat. This is shown by the following table** which analyzes 1950 transatlantic travel:

[fol. 4490]

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	Number of Passengers	% of Total
Air	316,827	31.4
Sea		
First Class	160,895	16.0
One & Cabin Class	235,554	23.4
Tourist Class	294,746	29.2
Total Sea	691,195	68.6
Total, Sea and Air	1,008,022	100.0%

A continued policy of high fares for transatlantic air travel will undoubtedly continue to divert potential airline traffic to surface carriers as well as to other world areas. This can best be appreciated by examining the fare levels for each classification of transatlantic travel. All-year air and first class steamer rates are generally comparable—nine and a half to ten and a half cents per mile—and air accounts for twice as many passengers as first-class steamer. But first-class air fares are not at all competitive with one and cabin-class rates—which range between six and seven cents per mile—and are even less competitive with tourist-class fares ranging from four to five cents per mile. Yet each of these two classes of steamship passengers is larger than first-class steamship. In other words, on-season first-class air fares are competitive with fares paid by only 23.3% of the 691,000 transatlantic steamship passengers.

There is an obvious demand for lower cost air transportation across the Atlantic and it seems clear that a year-round air fare of six and a half cents per mile—the one-way

* Reports of the U.S. Immigration and Naturalization Service.

** Taken from monthly IATA Traffic Reports.

tourist-class level proposed by Pan American would receive very substantial traffic support. It is significant that tourist-class steamship passenger volume is higher than that of any other single steamship class, and accounted for 43% of all transatlantic steamship travel in 1950 (see Attachment II). Moreover, it is an established fact that the low and medium-priced steamship accommodations are utilized *over the full-year period* at a higher rate than the luxury classes (Attachment II).

Analysis of historical travel, however, does not reflect the wholly new travel which would be developed among people who could and would pay $400 or so for round-trip travel between the United States and Europe, but who do not have the month's vacation which is the sensible minimum for boat travel.

All published travel market surveys are unanimous in their findings that the market broadens very considerably as the cost of travel decreases.* Data taken from a Curtis Publication survey** reveals that 2.4% of U. S. families spend

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[fol. 4491] over $1,500 per year for vacations and is corroborated by other independent market research studies.† According to the U. S. Census Bureau††, there are 39,200,000 families (family groups of two or more persons) in the United States, in addition to 9,000,000 individuals (single persons not living within a family group), meaning that 940,800 families spend over $1,000 per year on vacations, exclusive of a large but indeterminate number of single persons not living within a family group and for which no vacation expenditure data is readily available.

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* An independent survey among Time and Newsweek subscribers (January 1951) indicated that 74% of all transatlantic travellers had incomes of $5,000 a year or more.

** The Vacation Travel Market of the U.S., 1951, Curtis Publishing Company.

† See for instance American Magazine's Annual Travelogue, 1949.

†† Bulletin Series P-60, No. 7, February 8, 1951, U.S. Bureau of the Census.

At a round-trip fare of $405 the average couple vacationing in Europe would find a budget of $1,300 ample for a trip lasting 17 days. Total expenses of the average individual tourist to Europe would be approximately $750. Thus, a trip to Europe at the tourist fare level presented herein is within the normal vacation expenditure of a tremendous number of U.S. families and individuals. Obviously, the time saved by air would permit tourists trips to Europe not possible by boat. Studies by the U.S. Bureau of Labor Statistics* shows that 86% of all employees in private industries work under some form of paid vacation plan; the bulk of these people receive two weeks' vacation and are immediate prospects for a transatlantic tourist service.

Furthermore, annual income level is not necessarily the determinant in measuring the potential market, since an important source of traffic for the tourist service lies in the relatively low income groups represented by teachers, students, office workers and others. Many of these people are not financially able to take extended trips every year, but will accumulate savings toward one every other year. Not only will the tourist fare program permit more of these people to undertake a European trip, but it will permit them to take such trips more frequently than is now possible.

The tourist fare level will likewise broaden the potential transatlantic market within Europe. There is a higher volume of westbound steamship traffic over the Atlantic than is the case eastbound. A substantial portion of this traffic is represented by immigrants, the majority of which now go by boat; a tourist air fare would permit the airlines to compete more effectively for this available market.

Economic and Operational Considerations

In view of the market clearly available to the North Atlantic air carriers under a tourist fare program based on $225 one way between New York and London, as compared with a first-class fare of $375, it is now appropriate to analyze the economic soundness of such a tourist-class service. This

* U.S. Bureau of Labor Statistics, Monthly Labor Review, February & March 1945.

is set forth in detail in Attachment III. The tourist service would be operated with 61-seat DC-4 aircraft, which would average 55 seats available by operating via Keflavik when advantageous to do so. Frequency of Pan American's service would be limited to seven round trips per week (four to London and three to Paris) during June through September, and four round trips per week (two to London and two to Paris) during the other eight months of the year.

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[fol. 4492] Passenger service would be restricted, with meals available for sale to passengers at compensatory and reasonable prices. Fares would be based on $225 from New York to London, subject to 10% round-trip discount. Even with an allocation of overhead costs to this service, it would break even with an average of 33 passengers per trip, equivalent to an average seat factor (based on 55 seats available) of 60%. These calculations include charging the tourist service with $690,000 of overhead cost, thereby relieving the normal first-class operations of Pan American's Atlantic Division of an almost equivalent amount. Stated differently, if these overhead charges were not allocated to the tourist service, it would break even at a 49% seat factor.

There is not the slightest doubt that Pan American would carry more than the number of passengers necessary to average the 60% seat factor. Hence, the tourist service, viewed by itself, will clearly be economically sound.

In the event of concern as to the possible diversionary effect of a tourist service upon the first-class regular service, it is only necessary to examine the history of those areas in which tourist (or coach) services already are in operation. Experience demonstrates that first-class traffic more than maintains prior levels after the inauguration of tourist service.

One good illustration is the domestic coach field in the United States. Most of the U.S. domestic coach operations were inaugurated in the latter part of 1949 and the early part of 1950, and the impact of coach service on first-class revenues can be found by comparing 1949 and 1950 revenues. As shown in Attachment IV, coach-service passenger revenues in 1950 amounted to $43,242,000, as compared

with only $9,592,000 in 1949. However, first-class passenger revenues of these same carriers amounted to $346,970,000 in 1950, an increase of $14,558,000 over 1949.

Even more significant are the traffic results of domestic coach and first-class services. Shown in Attachment V are the revenue passenger miles developed by the principal operators of domestic coach services. It will be readily apparent from this data that first-class traffic and seat factors have risen over earlier levels *at the same time that coach services were operating at extremely high seat factors.* For instance, the coach services operated by American and TWA had seat factors ranging between 75 and 80% throughout the entire year of 1950, despite higher traffic and improved seat factors on their first class services. Reference to similar data for Eastern and National reveals the same general characteristics.

Another good illustration is found in Pan American's Bermuda operations. Tourist-class service, inaugurated on October 1, 1950, resulted in the carriage of 10,170 passengers in the tourist service during the next five months, while the volume of first-class passengers increased 11% at the same time.* In addition, there was a very substantial improvement in the seat factor on the first-class service. This is set forth fully in Attachment VI.

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[fol. 4493] (It should be noted that the combined traffic carried by Pan American and Colonial, between October 1950 and February 1951, was double the total traffic carried by Pan American, Colonial and BOAC in the same five months a year before** and was more than seven times the traffic carried by BOAC alone; it is apparent that the additional traffic was newly generated and not gained by BOAC's withdrawal from Bermuda service.)

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* Although the officially designated tourist service became effective on October 1, 1950, a round-trip $85 excursion fare on DC-4 aircraft was instituted on June 1, 1950 and resulted in an extremely high level of traffic to and from Bermuda throughout the summer months.

** BOAC suspended its U.S.-Bermuda service in March 1950.

In Attachment VII is traced the traffic history of Pan American's tourist and first-class service between New York and San Juan from the inception of the tourist service in 1948. Total traffic, as well as traffic on both tourist and first-class flights, has increased consistently to the point where the tourist service throughout 1950 had a year-round seat factor of approximately 75% in both directions and almost 80% on the first-class service. Pan American likewise operates parallel tourist and first-class flights over another major overseas route—between New York and the east coast of South America. This route does not offer the tremendous potential available over the North Atlantic; notwithstanding, however, the tourist service to Buenos Aires had an overall seat factor of 71.0% in January 1951 and 66.7% in February 1951, as compared with 75.2% and 78.2% respectively on the first-class service in these months.

Operation of tourist service under a restricted frequency arrangement moreover will provide an effective limit on any potential adverse effect upon first-class service. The tourist-class seats which Pan American proposes to operate during the summer months would approximate only 18.6% of its total North Atlantic service.*

A transatlantic tourist service need not be limited to DC-4 aircraft. Certain minimum requirements, however, applicable to every carrier, could be easily established, including (a) high density seating; (b) restricted passenger service; and (c) limited frequency.

A 61 seat DC-4 tourist aircraft is equivalent to approximately 50% additional seating capacity compared to a standard configuration in first-class transatlantic service. Utilizing the standard configurations employed by the Civil Aeronautics Board in its rate-making procedures applicable to U.S. carriers operating over the North Atlantic**, the following relationships are derived:

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* Based on the *combined* capacity of first-class and tourist services proposed.

** CAB Order E-3880-1-2, February 7, 1950.

Aircraft Type	Number of Seats: Standard Transatlantic Configuration per CAB	Tourist Configuration at 150% of Standard
DC-4	40	60
DC-6	43	64
L-49	43	64
B-377	61	91

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[fol. 4494] A limitation on tourist service frequency could be established as a percentage of first-class seats operated. An analysis is set forth below comparing the volume of regular first-class service which the North Atlantic carriers will operate during the summer of 1951* with the comparable volume of tourist-class service resulting from application of a ratio of 20% of first-class seats, a proportion suggested by the Civil Aeronautics Board as a reasonable limit:

Scheduled One-Way North Atlantic Passenger Capacity To and From U.S., Summer 1951, and Approximate Proposed Tourist Service Capacity

Carrier	Regular Summer Service: Weekly Trips	Weekly Normal Seats Available**	Proposed Tourist Service: Weekly Seats Available†	Approximate Weekly Trips††
Air France	12	496	99	1.8
BOAC	14	812	162	2.9
KLM	10	412	82	1.5
LAI	2	90	18	1.0
PAA	32	1684	337	6.1
SABENA	5	235	47	1.0
SAS	7	308	62	1.1
Swissair	3	132	26	1.0
TWA	21	890	178	3.2
Total	106	5059	1011	19.6

* Based upon carrier schedules shown in Official Airline Guide, May 1951, which for most carriers includes increased schedules for summer operation effective in June.

** Based upon standard maximum seats available for each aircraft type.

† Computed at 20% of indicated first-class seats available.

†† Based on operation of DC-4 aircraft with 55 seats normally available; number of trips weekly are derived by dividing previous column by 55 and allowing a minimum of one round trip weekly.

Pan American is convinced that a tourist-class service over the Atlantic would be successful, as it has been in every other heavy traffic area where it has been tried. In addition to the benefits which would accrue to the carriers in terms of increased traffic and revenues, a tourist fare program would redound to the obvious advantage of Europe's economy. Tourism is a leading dollar-earner in Western Europe—in 1950 the ERP countries earned approximately $396,000,000 from travel by U.S. residents.* However, as pointed out in a report on the role of tourism in the European Recovery Program, " . . . to accomplish these and further earning increments, more adequate transatlantic transport capacity is needed, especially at lower rates. . . . American and foreign flag carriers are being encouraged to make more transatlantic passenger capacity available at moderate rates. . . ."**

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[fol. 4495] In conclusion, it is particularly pertinent to refer to a recent address' by the Chairman of the Civil Aeronautics Board on "Aviation Policy in 1952," in which he stated in part as follows:

> "In March, the Board announced its policy for 1951 on trans-Atlantic charter operations. We decided that we would issue no further exemptions to authorize trans-Atlantic charter operations except where the regularly certificated trans-Atlantic carriers—both U. S. and foreign—are unable or unwilling to provide reasonably adequate charter service at established charter rates. We provided that our certificated U. S. trans-Atlantic air carriers will be authorized to contract for the flight equipment and the flight personnel, if necessary, of other air carriers to perform this charter service.

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* Business Information Service, No. 16, April 1951, U.S. Dept. of Commerce.

** Tourism in the European Recovery Program, Economic Cooperation Administration, June 1950.

' "Aviation Policy in 1952", Address by D. W. Rentzel, CAB Chairman, April 20, 1951, at annual conference of Airport Operators Council, Memphis, Tennessee.

"But we did something else when we established this policy that I believe may have far reaching consequences on the development of world trade and travel by air. We proposed that consideration should be given to the establishment of a low fare for individual passengers on regularly authorized trans-Atlantic service.

"That means that trans-Atlantic air travel may be brought within the financial reach of millions of people who cannot now afford the fare of the present luxury services. It may mean that large numbers of American citizens will be able to travel to Europe on a one or two-week vacation and come home with a better understanding of the cultural and political problems of Europe and their relationship to our national life than ever before existed."

TOTAL PASSENGER TRAVEL BETWEEN THE U. S. AND OVERSEAS AREAS - PRE-WAR, 1948 AND 1950 1/

Geographic Area	Prewar 2/	Percent of Total	1948	Percent of Total	1950	Percent of Total
Europe	611,577	57.3	776,447	44.0	1,071,999	48.3
Middle East	3,222	.3	15,208	.8	20,776	.9
Africa	1,826	.2	15,441	.9	9,943	.5
Total Transatlantic	616,625	57.8	807,096	45.7	1,102,718	49.7
Caribbean	214,692	20.1	551,507	31.3	663,979	30.0
Central America	39,115	3.7	86,630	4.9	83,559	3.7
South America	26,187	2.4	133,574	7.6	140,936	6.3
Total Latin America	279,994	26.2	771,711	43.8	988,474	46.0
Bermuda	106,691	10.0	77,006	4.4	115,247	5.2
Asia	53,667	5.0	100,156	5.7	74,844	3.4
Australasia	11,063	1.0	[illegible]	.4	41,319	1.8
Total Transpacific	[illegible]	6.0	106,893	6.1	115,163	5.1
All Areas	1,068,360	100.0	1,762,714	100.0	2,221,602	100.0

1/ Source: U.S. Immigration and Naturalization Service. Excludes travel between the U.S. and its possessions; between the U.S. and Canada, and travel across the land border of Mexico.

2/ Represents the average of fiscal years 1936, 1937, and 1938.

[illegible]

EXHIBIT Attachment) 1

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PASSENGERS CARRIED BY TRANSATLANTIC PASSENGER STEAMSHIP COMPANIES

1950

Eastbound
Number of Passengers

Period	First Class	One and Cabin Class	Tourist Class	Total Passengers	% Tourist to Total
Jan 1 - Jan 28	2,317	4,157	4,260	10,934	39.0%
Jan 29- Feb 25	2,625	2,842	4,599	10,066	43.7
Feb 26- Mar 25	4,220	7,295	8,041	19,556	41.1
Mar 26- Apr 22	8,906	9,583	10,907	29,396	37.1
Apr 23- May 20	10,947	13,735	14,696	39,378	37.3
May 21- Jun 17	11,174	13,692	14,386	39,252	36.6
Jun 18- Jul 15	12,210	14,220	14,681	41,111	35.7
Jul 16- Aug 12	5,695	11,465	11,927	29,087	41.0
Aug 13- Sep 9	5,240	13,585	12,936	31,761	40.7
Sep 10- Oct 7	4,340	6,477	11,365	22,182	51.2
Oct 8- Nov 4	3,342	3,022	9,502	15,866	60.0
Nov 5- Dec 2	2,835	2,123	5,897	10,855	54.3
Dec 3- Dec 30	2,047	2,591	11,599	16,237	71.4
Totals	76,098	104,787	134,796	315,681	42.7%

Westbound
Number of Passengers

Jan 1 - Jan 28	1,846	3,686	6,934	12,466	55.6%
Jan 29- Feb 25	2,079	5,626	6,196	13,901	44.6
Feb 26- Mar 25	2,774	7,384	9,279	19,437	47.7
Mar 26- Apr 22	4,846	6,893	11,012	22,751	48.4
Apr 23- May 20	5,590	10,015	12,674	28,279	44.8
May 21- Jun 17	7,459	9,955	11,214	28,328	39.6
Jun 18- Jul 15	7,007	11,783	12,584	31,374	40.1
Jul 16- Aug 12	9,173	12,810	13,286	35,269	37.7
Aug 13- Sep 9	13,140	17,230	16,978	47,348	35.8
Sep 10- Oct 7	11,684	17,022	14,698	43,404	33.9
Oct 8- Nov 4	9,916	12,191	17,352	39,459	44.0
Nov 5- Dec 2	5,368	7,912	13,102	26,382	49.7
Dec 3- Dec 30	4,215	8,260	14,641	27,116	54.0
Totals	84,797	130,767	159,950	375,514	42.6%

NOTE: Includes passengers carried by all members of Transatlantic Passenger Conference.

Source: Monthly IATA Reports.

[fol. 4498]

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APPENDIX D
ATTACHMENT III

OPERATING PLAN AND COST DATA

OPERATING PLAN

Under normal operating and traffic conditions, it is planned that all trips will be operated on the Great Circle Course via Gander-Shannon. If required, westbound trips may be operated via Iceland.

For purposes of this study, it was assumed that all westbound trips would be operated over the longer route via Iceland.

Based on average wind components and normal alternate routings the following payloads will be available:

	Pounds
Gander-Keflavik	10,100
Keflavik-Gander	11,500
Gander-Shannon	11,050
Shannon-Gander	8,100

All flights will be operated with crew complements consisting of a Captain, 1 Pilots and 1 Steward. Reserve crews will be maintained at required points.

STATISTICAL INFORMATION

Route Mileage

New York-Boston	184
Boston-Gander	910
Gander-Keflavik	1,579
Keflavik-London	1,168
London-Shannon	370
Gander-Shannon	1,982
Shannon-Paris	565
Keflavik-Shannon	923

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ATTACHMENT "B"
Attachment XII

Operating Statistics

	Revenue Miles Flown	Revenue Tons Flown *
On-Season		
London Service	928,845	2,644
Paris Service	408,561	1,139
Off-Season		
London Service	504,759	2,653
Paris Service	542,935	2,860
	2,385,080	10,296

* Computed at 191 MPH

ESTIMATED COST OF OPERATION

	Cost per Hour	Cost per Mile
Direct Aircraft Operating Expenses		
Flying Operations	$344.00	$ .754
Direct Maintenance - Flight Equipment	38.85	.800
Depreciation - Flight Equipment	38.87	.098
	$800.95	$ 1.052

The above estimates are generally based upon the experience in the Atlantic Division during the first 9 months of 1950. It provides for a crew complement consisting of 4 pilots. Depreciation and aircraft rental has been provided on the basis that 5 aircraft will be required to operate on-season and 3 aircraft will be required to operate off-season schedules.

[fol. 4500]

APPENDIX C
Attachment III

	Cost per hour	Cost per Miles
Direct Aircraft Operating Expenses (Continued)		
The unit cost per hour and per mile has been adjusted where required for a provision of 8 non-revenue flying.		
Ground and Indirect Expenses		
Estimated Additional Cost Directly Applicable to Tourist Service	$ [illegible]	$ .2[illegible]
These costs represent additional out-of-pocket expenses attributable directly to the tourist service such as landing charges, flight service personnel and travel and incidental expenses.		
Overhead Costs Allocable to the Tourist Service	.0[illegible]	.0[illegible]
A direct allocation of divisional and general office overhead costs which would include Ground Operations, Ground and Indirect Maintenance, General and Administrative, and Ground Equipment Depreciation Accounts, is made to the tourist service on the basis of available ton miles.		
Total allocation of overhead to the tourist service per year - $690,000.		

APPENDIX D
Attachment III

	Cost per Hour	Cost per Mile
Total Cost before Traffic and Sales, Advertising and Passenger Expenses other than Flight Attendants	$ 323.90	$ 1.6[illegible]
Traffic and Sales, Advertising and Passenger Expenses Estimated at 14% of Total Cost	$ 52.73	$ .27[illegible]
Total Cost of Operation or Total Revenues Required to Break Even	$ 376.63	$ 1.97[illegible]
Passengers Required to Break Even per Mile		33
Estimated Passenger Load Factor Required to Break Even on Basis of 55 Seats		6[illegible]%
Total Passengers Required in each Direction to Break Even per Year		3,54[illegible]

[fol. 4502]

APPENDIX D
Attachment IV

COMPARISON OF DOMESTIC TRUNKLINE
COACH AND FIRST CLASS PASSENGER REVENUES
1949 & 1950

	Passenger Revenue (000)		
	Coach	First Class	All Services
	$	$	$
1950			
American	4,761	92,340	97,101
Capital	4,418	17,761	22,179
Delta	1,700	13,896	15,596
Eastern	10,954	58,930	69,884
National	3,085	10,329	13,414
Northwest	6,915	17,664*	24,579
TWA	7,499	53,391	60,890
United	1,691	76,268	77,959
Western	2,219	6,391	8,610
Total	43,242	346,970	390,212
1949:			
American	29	84,886	84,915
Capital	3,218	16,019	19,237
Delta	5	12,631	12,636
Eastern	809	60,484	61,293
National	17	10,211	10,228
Northwest	3,507	18,991	22,498
TWA	1,788	50,953	52,751
United	--	72,389	72,389
Western	209	5,848	6,057
Total	9,592	332,412	342,004

*1950 first class revenues for Northwest are for eleven months only.

Source: CAB Forms 41;
Special carrier reports on coach traffic filed with CAB.

COMPARISON OF COACH AND FIRST CLASS PASSENGER TRAFFIC FOR SELECTED DOMESTIC TRUNKLINES

Revenue Passenger Miles (000)

a. American and TWA

	American			TWA		
	Coach	First Class	All Services	Coach	First Class	All Services
1950:						
January	4,174	100,742	104,916	7,272	52,281	59,553
February	3,498	93,165	96,663	6,669	47,779	54,448
March	•	85,492	85,492	10,483	66,655	77,138
April	6,800	133,425	140,225	9,739	69,879	79,618
May	10,800	146,715	157,575	12,571	83,863	96,620
June	11,901	165,429	177,330	18,939	97,040	115,979
July	11,938	152,515	164,453	19,093	89,268	108,361
August	11,183	159,823	171,006	19,960	91,699	111,659
September	11,313	154,866	166,179	19,132	92,058	111,190
October	11,973	163,380	175,353	16,479	96,591	113,070
November	9,266	140,557	149,823	13,290	76,675	89,965
December	10,259	146,159	156,418	16,471	84,112	100,583
Total	103,165	1,642,268	1,745,433	170,098	948,086	1,118,184
Seat Factor	79.4%	69.1%	69.7%	75.1%	64.0%	65.4%
1949:						
January	-	99,086	99,086	-	55,318	55,318
February	-	94,766	94,766	-	53,965	53,965
March	-	116,421	116,421	-	69,280	69,280
April	-	129,747	129,747	3,262	76,301	79,563
May	-	138,902	138,902	3,524	85,494	89,018
June	-	150,886	150,886	5,816	97,106	102,922
July	-	136,657	136,657	6,384	86,139	92,523
August	-	136,030	136,030	5,972	83,029	89,001
September	-	142,960	142,960	6,046	86,841	92,887
October	-	143,030	143,030	4,718	81,489	86,207
November	-	116,659	116,659	4,015	62,853	66,868
December	660	102,254	102,914	5,744	55,206	60,950
Total	660	1,507,398	1,508,058	45,481	893,221	938,702
Seat Factor	16.5%	64.8%	64.8%	74.6%	60.3%	60.8%

• Service curtailed due to strike.

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[fol. 4504]

APPENDIX L
Attachment V

COMPARISON OF COACH AND FIRST CLASS PASSENGER TRAFFIC
FOR SELECTED DOMESTIC TRUNKLINES

Revenue Passenger Miles (000)

B. Eastern and National

	Eastern			National		
	Coach	First Class	All Services	Coach	First Class	All Services
1950:						
January	14,458	77,254	91,712	4,843	15,306	20,149
February	16,835	83,462	100,297	6,878	17,395	24,273
March	23,658	99,472	123,130	7,575	19,797	27,372
April	24,242	87,793	112,035	7,362	16,697	24,329
May	20,137	74,528	94,665	5,210	11,382	16,592
June	25,734	77,244	102,978	6,410	11,358	17,768
July	26,315	72,080	98,395	5,464	11,981	17,445
August	24,041	73,967	98,008	4,794	13,485	18,279
September	24,167	71,308	95,475	5,092	14,328	19,420
October	22,846	79,127	101,973	5,522	15,356	20,878
November	21,746	75,378	97,124	5,453	16,844	22,297
December	24,612	89,024	113,636	7,362	19,919	27,281
Total	269,359	960,069	1,229,428	72,235	183,848	256,083
Seat factor	80.0%	58.0%	61.7%	70.4%	49.0%	53.6%
1949:						
January	-	78,406	78,406	-	15,134	15,134
February	-	86,495	86,495	-	16,386	16,386
March	-	102,538	102,538	-	17,668	17,668
April	-	92,332	92,332	-	14,938	14,938
May	-	82,153	82,153	-	12,234	12,234
June	-	87,172	87,172	-	13,024	13,024
July	-	81,145	81,145	-	13,779	13,779
August	-	74,280	74,280	-	11,633	11,633
September	449	78,356	78,805	-	12,377	12,377
October	3,030	78,681	81,711	-	13,207	13,207
November	3,367	70,218	73,585	1,868	10,821	12,689
December	10,170	69,321	79,491	3,418	12,538	15,956
Total	20,016	978,097	998,113	5,286	163,739	169,025
Seat factor	72.5%	55.1%	55.4%	58.9%	44.6%	44.9%

Source: CAB Form 41;
Special carrier reports on coach traffic filed with CAB

[Doc. 4505]

PASSENGERS CARRIED BY PAN AMERICAN BETWEEN THE UNITED STATES AND BERMUDA

Period	Southbound			Northbound			Both Directions		
	Tourist Service	First-Class Service	Total	Tourist Service	First-Class Service	Total	Tourist Service	First-Class Service	Total
October 1950	831	1,023	1,854	894	940	1,834	1,725	1,963	3,688
November 1950	881	688	1,569	1,004	775	1,779	1,885	1,463	3,348
December 1950	1,153	1,002	2,155	1,025	741	1,766	2,178	1,743	3,921
January 1951	884	542	1,426	1,016	896	1,912	1,900	1,438	3,338
February 1951	1,250	898	2,148	1,237	915	2,147	2,482	1,813	4,295
Five Months' Total:									
Passengers	4,999	4,153	9,152	5,171	4,267	9,438	10,170	8,420	18,590
Seat Factor	64.4%	69.6%	66.7%	67.1%	69.1%	68.0%	65.8%	69.4%	67.3%
October 1949	--	969	969	--	1,043	1,043	--	2,012	2,012
November 1949	--	584	584	--	678	678	--	1,262	1,262
December 1949	--	704	704	--	627	627	--	1,331	1,331
January 1950	--	523	523	--	766	766	--	1,289	1,289
February 1950	--	860	860	--	818	818	--	1,678	1,678
Five Months' Total:									
Passengers	--	3,640	3,640	--	3,932	3,932	--	7,572	7,572
Seat Factor	--	38.8%	38.8%	--	42.1%	42.1%	--	40.5%	40.5%

Source: Company records.

APPENDIX D
ATTACHMENT VI

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[fol. 4506]

APPENDIX D
Attachment VII

NUMBER OF REVENUE PASSENGERS CARRIED BY PAN AMERICAN
ON LOCAL TOURIST AND FIRST CLASS FLIGHTS BETWEEN NEW YORK AND SAN JUAN

	SOUTHBOUND			NORTHBOUND		
	Tourist Service	First Class Service	All Services	Tourist Service	First Class Service	All Services
1950:						
January	1,139	1,159	2,298	3,727	1,142	3,869
February	1,107	1,078	2,185	1,845	865	2,710
March	1,360	1,069	2,429	2,134	1,272	3,406
April	1,330	987	2,317	2,809	1,250	4,059
May	1,552	893	2,445	3,[illegible]	1,941	4,437
June	3,085	1,382	4,[illegible]67	5,[illegible]	1,338	6,483
July	5,136	1,514	6,[illegible]50	7,[illegible]	1,[illegible]95	8,455
August	3,580	1,217	4,[illegible]97	6,[illegible]81	1,[illegible]25	7,406
September	2,678	970	3,648	6,[illegible]	[illegible],175	7,835
October	3,306	1,162	4,468	3,[illegible]	[illegible],137	5,069
November	2,266	1,148	3,414	2,[illegible]	879	3,564
December	4,666	1,702	6,368	2,[illegible]34	995	3,429
Total	30,235	14,281	44,486	46,687	14,034	60,721
Seat Factor	66.1%	79.2%	69.8%	87.5%	77.1%	84.8%
No. of trips	888	395	1,283	920	393	1,313
1951:						
January	1,799	380	2,179	2,505	648	3,153
February	1,[illegible]77	228	1,505	1,835	332	2,167
March	1,222	129	1,351	2,281	290	2,571
April	1,[illegible]16	109	1,525	2,753	263	3,016
[illegible]	1,530	66	1,596	3,485	355	3,[illegible]40
June	2,864	646	3,510	4,462	294	4,756
July	4,200	771	4,971	5,291	522	5,813
August	3,044	923	3,967	4,716	886	5,602
September	2,135	886	3,021	4,635	1,197	5,832
October	1,783	1,039	2,742	3,039	756	3,795
November	1,142	873	2,015	2,027	677	2,704
December	3,177	1,528	4,705	1,616	818	2,[illegible]34
Total	25,589	7,578	33,167	38,645	7,038	45,683
Seat Factor	62.5%	60.4%	62.1%	85.5%	53.2%	78.2%
No. of trips	715	302	1,017	756	295	1,051

Source: Company records.

[fol. 4507]

Appendix "E"
to
Minute M/179

Recommended Practice

COST OF GROUND TRANSPORTATION

160/1105—RECOMMENDED, that a reasonable charge for ground transport service between the airport used by the passenger and the city being served shall be made at origin, destination and stopover points.

[fol. 4508]

Appendix "F"
to
Minute M/180

Recommended Practice

COST OF GROUND TRANSPORTATION

280/1105—RECOMMENDED, (1) that Members operating international scheduled air services wholly within Traffic Conference 2 give early consideration to the proposition that passengers be charged a fare for ground transportation provided by or operated on behalf of Members between the airport and its respective city centre (town terminal) at points or origin, stopover, and destination;

(2) that such proposition shall be considered on an area basis at local meetings of Members' representatives;

(3) that in the event that agreement can be reached in any area for the application of a fare, such agreement should be put into effect at the earliest date permissible under Conference procedures;

(4) that any fare that may be agreed upon shall be separate from and additional to the air fare paid by the passenger.

[fol. 4509] 133

Appendix "G"
to
Minute M 329

REPORT OF THE GLOSSARY AD HOC COMMITTEE

Pursuant to the direction of the Chairman of the composite meeting of the Conference, the Glossary Ad Hoc Committee considered the matter of the advisability of the Conferences, at the meeting adopting the Glossary of Air Traffic Terms as set forth in the Traffic Handbook, in the form of a resolution.

2. As a result of its discussions of the matter, the Ad Hoc Committee recommends that:

(i) the Conferences, at this meeting should not adopt the Glossary either in the form of a resolution or in any other form having binding effect on the Members;

(ii) the Conferences should refer the matter to the Traffic and Legal Committees and request those Committees to prepare appropriate recommendations for consideration by Conferences at the next composite meeting;

These recommendations are based on the following considerations:

(a) It was not possible for the Ad Hoc Committee, within the time available to it, to study adequately the effect which each of the terms contained in the Glossary would have on the presently existing resolutions and those in the process of adoption. Accordingly the Ad Hoc Committee is not prepared to state that the definitions of each term contained in the Glossary is consistent with the intended meaning of that term where and as used in any of the resolutions.

(b) The Ad Hoc Committee is of the opinion that the seriousness and importance of giving binding effect to the definitions is such as to warrant greater deliberation and care than is possible at this meeting.

3. In addition to the matter of the Glossary the Ad Hoc Committee under the directions of the Chairman of the composite meeting considered that part of the report of the special committee (created at the Madrid meetings) on the application to Conference No. 4 of certain ambiguous resolutions containing a list of recommended definitions of certain terms frequently used in the resolutions. These recommended definitions are as follows:

Traffic Terms and Definitions

Fare, Normal	means the full, on or off-season fare established for a normal, regular or usual service, the application of which is not dependent upon any specially limited period of validity or other special circumstance.

[fol. 4510] —134—

Fare, Class B	which is equivalent to the terms tourist fare and second class fare, means the full on or off-season fare established for Class B (tourist or second class) service, the application of which is not dependent upon any specially limited period of validity or other special circumstance;
Fare, Specified	means the fare specified in an applicable Conference resolution;
Rate, Specified	means the rate for the carriage of goods specified in an applicable Conference resolution;

Fare, Constructed	means the fare established in accordance with the provisions of an applicable Conference construction resolution;
Rate, Constructed	means the rate established in accordance with the provisions of an applicable Conference construction resolution;
Rate, Normal,	means a rate established for commodities in general, the application of which, with respect to a given consignment is not dependent upon the existence of any special qualifications, such as minimum quantities or nature of the commodity;
Fare, Basic	means either a specified or constructed fare expressed in the basic currency (Sterling or U.S. Dollars);
Rate, Basic	means either a specified or the constructed rate expressed in the basic currency (Sterling or U.S. Dollars).

4. While the Ad Hoc Committee, as in the case of the Glossary, recommends that the Conferences at this meeting should not adopt definitions of these terms in a form having binding effect, it realized that the Conferences may desire nevertheless to do so, in which event the Ad Hoc Committee would recommend the following amendments and additions:

(a) amend "Fare, Normal" so as to read:

> Fare, Normal means a fare for a regular and usual service, the application of which is not dependent upon any specially limited period of validity or other special circumstance;

(b) add a new term and definition "Fare, IATA Normal" to read:

Fare, IATA Normal means a specified or constructed normal fare;

[fol. 4511] —135—

(c) add a new term and definition "Fare, IATA Normal First Class" to read:

Fare, IATA Norm First Class means the highest minimum IATA normal fare;

(alternate definition)—means the minimum IATA normal fare established for First Class services

Note: The first of these recommended definitions would be incorrect in the case of points or places between which only a tourist fare was established by the Conferences.

(d) add a new term a definition "Fare, IATA Normal Tourist Class" to read:

Fare, IATA Normal Tourist Class, means the minimum IATA normal fare established for tourist class services;

(e) amend the term and definition of "Fare, Class B" to read as follows:

Fare, IATA Normal Class B, means the minimum IATA normal fare established for Class B services;

(f) amend the definition of "Constructed Rate" by inserting before the word "established" the words "for the carriage of goods";

(g) add a new term and definition as follows:

"Rate, IATA Normal, means a specified or constructed normal rate".

5. In the light of the said list of terms and definitions (as amended and added to by the Ad Hoc Committee), the Ad Hoc Committee examined each of the presently existing resolutions to determine what effect thereon the proposed new terms and definitions would have. For obvious reasons no such complete examination was attempted in respect of the resolutions in the process of adoption. Parenthetically, it seems advisable to state that this is one of the principle reasons why the Ad Hoc Committee recommends that the Conferences should not adopt the list at this meeting.

6. The results of the said examination are as follows:

(i) In Resolutions 014e, 270 045, 052, 360 053, JT12(7)054a, JT12(7)054e, 057, 155a, 155c, 156, 157, 157a para (d), 157b para (d), 270 158 para (h), 360/158 para (g), 159, 159a, 163, 164a, 164c, 164d, 166, 167, 169, 171, 172c, 270 728a, 330 728b, the word normal would have to be deleted and the words "IATA Normal First Class" inserted instead.

[fol. 4512] —136—

(ii) In Resolutions 051, 051a, 150, 150a, 151a, 152a, 201, 204, 276, 260 130, 150 311, 270 311, 260 810e, immediately before the word "normal" the letters "IATA" would have to be inserted.

(iii) In Resolutions 159 (Para 8) and 163 (Para 8) the word "basic" would have to be deleted and the words "IATA Normal First Class" would have to be inserted.

(iv) In Resolution 503 the word "basic" would have to be deleted and the words "IATA Normal Rate" would have to be inserted.

7. In respect to the Ad Hoc Committee's recommended definition of the term "Fare, Normal", some of the Members were of the opinion that, while it would be inadvisable to do so now because of the use in many resolutions of the term normal round trip, it might be desirable for any committees studying the Glossary problem in its entirety to consider defining the term so as to mean only a one-way fare.

fol. 4513]

Appendix "N"
to
Minute M/495

TRAFFIC CONFERENCE 1

BUDGET

Calendar Year 1951

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Salaries	$37,300.	$19,200.	$56,500.
Pension Fund	1,600.	500.	2,100.
Travelling Expenses	6,300.	500.	6,800.
Rent and Maintenance	5,000.	2,800.	7,800.
Office Supplies and Expenses	4,300.	3,000.	7,300.
Printing	400.	600.	1,000.
Postage	3,500.	2,600.	6,100.
Telegrams and Telephones	3,500.	1,000.	4,500.
Books and Publications	50.		50.
Taxes and Social Insurance	1,700.	700.	2,400.
Insurance	150.	100.	250.
Miscellaneous	500.	200.	700.
Organization of Meetings	5,500.	150.	5,650.*
Entertainment	200.	50.	250.
Depreciation	700.	400.	1,100.
Enforcement Section	28,400.	-	28,400.**
	$99,100.	$31,800.	$130,900.

*Assuming there is only one Conference meeting.

**If receipts arising from Enforcement procedures do not cover expenses, Conference Members must cover deficit in accordance with Conference Provisions.

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Carried Forward.....	$99,100.	$31,800.	$130,900.
Less: Charge to Head Office for Branch Office Services.....	12,000.	-	12,000.
Total Conference Budget.....	$87,100.	$31,800.	$118,900.
Less: Recoverable by Receipts from Agency Fees.....$31,800***			
Enforcement Levies..... 28,400.			60,200.
Net Assessment to Members			$58,700.

*** Estimated total collections for all Conferences in 1951, including entrance fees - $131,000.

[fol. 4515]

Appendix "I"
to
Minute 4/105

TRAFFIC CONFERENCE 2

BUDGET

Calendar Year 1951

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Salaries	$30,400.	$16,300.	$46,700.
Pension Fund	1,500.	500.	2,000.
Travelling Expenses	8,000.	800.	8,800.
Rent and Maintenance	3,000.	1,700.	4,700.
Office Supplies and Expenses	5,200.	2,000.	7,200.
Printing	600.	200.	800.
Postage	3,300.	2,700.	6,000.
Telephones and Telegrams	5,900.	1,700.	7,600.
Books and Publications	50.	-	50.
Taxes and Social Insurance	4,800.	2,500.	7,300.
Insurance	250.	150.	400.
Miscellaneous	700.	300.	1,000.
Organisation of Meetings	5,350.	200.	5,550.*
Entertainment	350.	50.	400.
Depreciation	1,300.	700.	2,000.
Enforcement Section	28,400.	-	28,400.**
	$99,100.	$29,800.	$128,900.

* Assuming there is only one Conference Meeting.

** If receipts arising from Enforcement procedures do not cover expenses, Conference Members must cover deficit in accordance with Conference Provisions.

Appendix "J"
to
Minute M/495
(Continued)

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Carried forward.....	$99,100.	$29,800.	$128,900.
Charge to Head Office for Branch Office Services.....	12,000.	-	12,000.
Total Conference Budget.....	87,100.	29,800.	12,000.
Less: Recoverable by receipts from Agency Fees.....	29,800. ***		
Enforcement Levies.....	28,400.		58,200.
	Net Assessment to Members		$58,700.

*** Estimated total collections for all Conferences in 1951, including entrance fees - $111,000.

fol 4517

Appendix "J"
to
Minute M/405

TRAFFIC CONFERENCE 3

BUDGET

Calendar Year 1951

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Salaries	87,500.	82,200.	89,700.
Pension Fund	150.	50.	200.
Travelling Expenses	3,300.	100.	3,400.
Rent and Maintenance	1,050.	250.	1,300.
Office Supplies and Expenses	650.	350.	1,000.
Printing	50.	50.	100.
Postage	2,200.	1,000.	3,200.
Telephones and Telegrams	1,700.	400.	2,100.
Books and Publications	50.	-	50.
Taxes and Social Insurance	50.	-	50.
Insurance	100.	50.	150.
Miscellaneous	400.	50.	450.
Organization of Meetings	2,950.	50.	3,000.*
Entertainment	50.	50.	100.
Depreciation	300.	100.	400.
Enforcement Section	15,800.	-	15,800.**
	$36,300.	$4,700.	$41,000.

* Assuming there is only one Conference Meeting.

** If receipts arising from Enforcement procedures do not cover expenses, Conference Members must cover deficit in accordance with Conference Provisions.

Appendix "F"
to
Minute 11/195

	Combined Branch Office and Traffic Conference	Agency	TOTAL
Carried Forward.....	$36,300.	$4,700.	$41,000.
Less: Charge to Head Office for Branch Office services....	4,000.	-	4,000.
Total Conference Budget.....	$32,300.	$4,700.	$37,000.
Less: Recoverable by receipts from:			
Agency Fees.....	4,700.***		
Enforcement Levies.....	15,800.		20,500.
Net Assessment to Conference Members			$16,500.

*** Estimated total collections for all Conferences in 1951, including entrance fees - $131,000.

fol. 4519

Appendix "B"
to
Minute M/L 5
(Continued)

ENFORCEMENT OFFICE

BUDGET

Calendar Year 1951

Salaries			$30,300.
Pension and Group Life Insurance			1,000.
Travelling Expenses			
Direct Conference 1		12,000.	
" " 2		12,000.	
" " 3		7,500.	
		31,500.	
Indirect		1,700.	33,200.
Rent and Maintenance			1,200.
Supplies and Expenses and Printing			250.
Postage			300.
Telephones and Telegrams			1,000.
Taxes and Social Insurance			1,000
Insurance			100.
Miscellaneous			500.
Commission Meetings:			
Direct Conference 1		1,400.	
" " 2		1,400.	
" " 3		800.	3,600.
Depreciation			150.
			$72,600.

Distribution by Conferences

	Direct	Indirect	Total
Conference 1	$13,400.	$15,000.	$28,400.
Conference 2	13,400.	15,000.	28,400.
Conference 3	8,300.	7,500.	15,800.
	$35,100.	$37,500.	$72,600.

Appendix "I"
to
Minute 1/SC3

PRESS STATEMENT

An increase of 5.3% across the North Atlantic for air fares, beginning October 1, 1951, reflects the action, in general, taken in Bermuda by the Sixth Meeting of the Composite and Joint Traffic Conferences of the International Air Transport Association.

In some areas fares were not increased, and plans were made for the introduction in October 1952 of low-fare tourist service, notably across the North Atlantic and between London and South Africa. The Conference decided to continue the popular winter excursion fares across the North Atlantic and to encourage student travel between their homes and college, 50% reduction will be granted to students up to the age of 26 years.

Mr. R.E.S. Deichler, Chairman (Vice President, American Airlines) stated that a review of operating costs of the carriers, representing 65 airlines from 42 nations, shows an average increase of operating expenses in the excess of 20%. He stated that the fare increase did not reflect these higher costs of gasoline and oil, salaries, materials and government fees to the full extent, because the airlines of the world had increased efficiency and business sufficiently to off-set the inflationary increase in expenses.

The Bermuda Conference was a milestone in the achievement of uniformity and standardization of services to the public. For the first time in the history of air transportation has the international air traffic between the countries of North, Central and South America been brought under a uniform fares and rates pattern. The operators serving this area were able to achieve this agreement without disturbing the present level of fares and rates, thereby assuring to the public a continued high standard of service at no increase in cost. The ability of operators to come to this agreement, which has been sought for a number of years, is further proof that international co-ordination in air transport is well on it way to perfection.

The sixty-five Member carriers, representing all leading international airlines of the world, and aggregating more than half a million route air miles also perfected the standard practices of tickets, reservations, baggage handling and cargo procedures to a point never before considered, so that travel and shipment by air on international flights becomes convenient and easier for the public the world over. On the other hand the Conferences permitted the flexibility necessary in certain special areas where local conditions required some change in the application of the rules.

All traffic agreements made by the Members of I.A.T.A. are subject to approval by Governments before they may become effective.

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[fol. 4521]

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Appendix "B"

TRAFFIC CONFERENCE 1

Committee Membership

Agency
(Approval of Agencies and Their Administration)

Member	Company	Alternate
P. Rousselle	AF	
D.L. Urquhart	AA	Frank Baker
Juan Ucros P.	AVIANCA	J. de Brigard
C. R. Beattie (Vice-Chairman)	BNF	A. S. Aldrige
H. F. Good	BOAC	
K. J. Howe	CAB	
C. W. Budd	CPAL	
Shaun Mahoney	KLM	
S. Aldunate Videla	LAN	
H. . Held	LTV	V. B. Chataing
William A. Perry	NAL	
L. R. Kinports	NWA	C. R. Hussey
N. T. Blake	PAA	
R. de Murias	PANAGRA	
H. P. Heim	PAL	
R. C. Hardon	PAL	
Stir B. Anderson	SAS	
L. Michaelis	SAB	A. J. Butler and I. Kondakis
F. Merry del Val	SERVICOS CRUZEIRO	
R. E. Deyman	TCA	G. E. Gray
E. Sullivan (Chairman)	TWA	
K. P. Hughes	UAL	

Cost
(Analysis of Operating Costs

Member	Company	Alternate
H. J. Lecleur	AF	
J. B. Scott (Chairman)	BOAC	
C. C. Adams	BNF	
T. F. Hambleton	CAB	
J. C. Gilmer	CPAL	
S. Aldunate Videla	LAN	
J. E. Mariner	NWA	
J. H. Melowet	PANAGRA	
R. J. Ferguson	PAA	L. S. Hiester
J. Dillenbeck	SAS	
T. Brabant	SAB	F. J. Martens
M. S. Pacheco	SERVICOS CRUZEIRO	
R. S. Harvey	TCA	N. E. Taylor
. McCurdy	TWA	

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Appendix "W"
(Continued)

TRAFFIC CONFERENCE 1

Committee Membership

Fares, Rates, Charges & Schedules

Member	Company	Alternate
M. J. Lesieur	AF	
J. Mahoney	AA	
L. A. Person	BNF	
L. J. Rashbrook	BOAC	M. M. Clarke
L. J. Priester	CAS	
C. W. Budd	CPA L	M. t. Stamp
J. W. Cross	KLM	
Sergio Aldunate Videla	LAN	
S. Meiman	SAS	
R. Teichhols	PAN	
G. G. Mason	PANAGRA	
W. R. Stevens	PAA	
H. Gyllensward	SAS	J. Church
F. J. Martens	SAS	
O. Breyer	SERVICOS CHEQUERO	
J. Lane (Vice Chairman)	TCA	
J. R. Burch (Chairman)	TWA	

[fol. 4523]

TRAFFIC CONFERENCE 2

Committee Membership

Air Guide

Member	Company	Alternate
G. Delclaux	AF	
J. P. van der Hayden	KLM	
G. E. Kotby	MISR	
W. B. Pratt	SAA	
J. C. van Cutsem	SAB	
R. Schultz	SAS	
J. R. Burch	TWA	

Agency
(Approval of Agencies and their Administration)

Member	Company
J. N. Beaford (Chairman	AF
H. J. ... Hill	BOAC
... C. Hughes	CAA
R. A. R. Wieland	CDT
B. Meguerditche	DNL
... Honne	KLM
J. W. Meijer	MISR
M. F. Raafat	PAA
H. P. Hoim	PAB
E. Schoueri	SAB
... Cliquet	SAS
J. T. Pratt	SWISSAIR
F. Kreis	TWA
H. J. Verderber	

Cost
(Analysis of Operating Costs)

Member	Company
J. B. Scott (Chairman)	BOAC
All Conference Members	

Appendix "BB"
(Continued)

TRAFFIC CONFERENCE 2

Committee Membership

Fares, Rates, Charges & Schedules

Member	Company	Alternate
G. Delclaux	AF	
S. F. Wheatcroft (Chairman)	BEA	
L. W. Rashbrook	BOAC	
V. Mathisen	DDL	
J. W. Cross	KLM	
O. E. Kolby	SILSR	
W. R. Stevens	PAA	
E. Schoeneri	PAB	
W. B. Pratt	SAA	
J. C. van Cuteem	SAB	
W. Imhof	SWISSAIR	
J. R. Baroh	TWA	

TRAFFIC CONFERENCE)

Committee Membership

Agency
(Approval of Agencies and their Administration)

Member	Company	Alternate
S. R. Knight	AIRCZY	
. Evrard	AF	
J. Minchan	BCPA	
... C. Hughes (Chairman)	BOAC	
... W. Budd	CPAL	
J. W. Meijer	KLM	
J. Farrell	NWA	
H. D. Yates	NZAC	
H. P. Heim	PAA	
C. N. Biondi	PAL	
N. D. Jones	QEA	
T. Petersen	SAS	
H. M. Denton	TEAL	
E. Sullivan	TWA	

Cost
(Analysis of Operating Costs)

Member	Company
P. Hebrard	AF
... Lowe	BCPA
J. B. Scott	BOAC
J. C. Gilmer	CPAL
J. ... Mariner (Chairman)	NWA
R. G. Ferguson	PAA
R. Igoa	PAL
F. C. Derham	QEA
D. W. Banks	TEAL
W. McCurdy	TWA

Fares, Rates, Charges & Schedules

Member	Company	Alternate
P. Hebrard	AF	
E. V. Wall	BCPA	
L. W. Rashbrook	BOAC	
C. W. Budd	CPAL	M. R. Stamp
J. V. Croes	KLM	
J. W. Mariner (Chairman)	NWA	
H. D. Yates	NZAC	
W. R. Stevens (Vice-Chairman)	PAA	
C. N. Biondi	PAL	
T. W. Roff	QEA	
H. M. Denton	TEAL	
J. R. Baroh	TWA	

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[fol. 4539]

PAN AMERICAN WORLD AIRWAYS, INC. EXHIBIT 429

Orders
Serial Numbers E-5623

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 17th day of August, 1951

Agreements C.A.B. Nos. 5326 R-1, 3, 5-8, 11-17, 25, 27, 29-39, 41-44, 46-48, 50, 51, 53, 54, 58-88, 98-105, 107, 120-125, 134, 135, 142, 143

In the matter of certain resolutions adopted at Traffic Conference Meetings of the International Air Transport Association at Bermuda between

PAN AMERICAN WORLD AIRWAYS, INC., VARIOUS AIR CARRIERS, FOREIGN AIR CARRIERS, AND OTHER CARRIERS

relating to rate matters

ORDER

There has been filed with the Board pursuant to Section 412(a) of the Civil Aeronautics Act and Part 261 of the Board's Economic Regulations certain agreements between various air carriers, foreign air carriers, and other carriers embodied in resolutions of the Traffic Conference of the International Air Transport Association at meetings in Bermuda in May 1951 evidenced by the above designated agreement numbers.

In order to clarify the relationship between Board action on IATA agreements and Board action with respect to similar subjects in other Board tariff and rate proceedings, the Board believes it appropriate, prior to a specific consideration of the agreements now before it, to point out some of

the factors which must be considered in passing on IATA agreements which do not apply in the case of Board action with respect to tariffs in air transportation.

There are two basic factors which must enter into our consideration of IATA agreements. First, is the fact that the Board has no statutory authority over rate levels in foreign air transportation and lacks the statutory power to suspend tariffs for foreign transportation. Accordingly it may in some cases be less adverse to the public interest to approve an IATA agreement on rates, even though the rates agreed on fail to meet the standards of justness and reasonableness applicable to interstate and overseas air transportation, than to disapprove the agreement and leave the carriers free to file rates which depart to an even greater degree from these standards.

[fol. 4540] Second, it must be remembered that IATA is an organization of air carriers of many countries with varying national interests and differing concepts of transportation principles. It is obvious that such an organization cannot function without a large degree of mutual accommodation. If each government involved were to withhold approval of any agreement which did not in every way measure up to that government's conception of national interest and proper transportation principles no agreements could ever be reached. In the light of this situation the Board believes that it should be slow to disapprove agreements which do not apply in air transportation or adversely affect such transportation, even though the particular agreement may not accord with our national law or our concepts of proper transportation practice.

We believe that the foregoing discussion of some of the basic factors entering into our consideration of IATA agreements will serve to indicate that our action with respect thereto is of little relevance or precedent value in connection with rate and tariff proceedings involving air transportation, and also provide a background for the findings which follow.

After consideration of the above designated agreements[1] submitted for our approval we make the following findings with respect thereto.

[fol. 4541] 1. Subject to the general conditions that:

(a) Approval of any resolution herein shall not be deemed approval of the application to such resolution of any other resolution except to the extent permitted by any approval of such other resolution.

(b) No approval of any resolutions herein shall extend beyond the period during which Board approval of the "Provisions for the Resolution and Conduct of the Traffic Conference of the International Air Transport Association" is in effect.

(c) Approval of any effectiveness resolution is limited to the extent that it provides effective dates for other approved resolutions.

We do not find the following resolutions or portions of resolutions to be adverse to the public interest or in violation of the Civil Aeronautics Act.

---

[1] In order to simplify reference to the large number of resolutions involved, the following system has been adopted:

All IATA resolutions bearing the same IATA series number have been designated by the same R number under CAB agreement No. 5326. So, for example, the resolution on "Free Transportation—Personal" which applies in Conference 2, Conference 3 and Joint Conferences 23, and carries the IATA numbers 370 210, JT 23(8) 210 and 280 210 would be listed as follows:

IATA No.	C.A.B. No.	Title	Applicability
210	R-87	Free Transportation—Personal	2, 3, 2-3

Any reference to R-87 would be a reference to all resolutions bearing the IATA No. 210. If reference is made to the 210 series resolutions applying in specific Conferences e.g., Conference 2 and Joint Conferences 23, the reference would be R-87 (2; 2-3).

If the Application is indicated as "worldwide" it means the resolution applies in all seven Conferences i.e., 1, 2, 3, 1-2, 2-3, 3-1, and 1-2-3.

IATA No.	C.A.B. No.	Title	Applicability
001	R-1	Standard Effectiveness Resolution	Worldwide
001b	R-3	Escape Clause Effectiveness Resolution	Worldwide
001d	R-5	Special Effectiveness Resolution—Class B. Fares	2
001e	R-6	Special TC1 Effectiveness Resolution	1
001f	R-7	Special Effectiveness Resolution—Mid-Atlantic	1-2
014a	R-11	Construction Rule for Passenger Fares	Worldwide
014b	R-12	Construction Rule for Cargo Rates	Worldwide
014d	R-14	Special Construction Rule—Directional Fares and Rates	2
018	R-17	Proration of Involuntarily Rerouted Consignments	Worldwide
052	R-25	Conference 2 Fares and Rates	2
054b	R-29	Mid-Atlantic On and Off-Season Fares and Rates	1-2
[fol. 4542]			
054c	R-30	South Atlantic Fares and Rates	1-2
054d	R-31	South Atlantic Fares—Spanish	1-2
055	R-32	JT23 Fares and Rates	2-3
057	R-34	Sydney, Auckland and London Fares	1-2-3
102a	R-35	Passenger Expenses at Connecting Points	Worldwide
105	R-36	Cost of Ground Transportation	2, 3
150a	R-41	Round-Trip Discounts	Worldwide
151a	R-42	Circle-Trip Discounts	Worldwide
152a	R-43	Open-Jaw Trip Discounts	Worldwide

IATA No.	C.A.B. No.	Title	Applicability
152b	R-44	Filing of Open-Jaw Fares	Worldwide
154	R-46	Definition of Around-the-World-Trip	Worldwide
154a	R-47	Around-the-World-Trips	Worldwide
155	R-48	Excursion Fares	2, 3
155b	R-50	Mid Atlantic 17 Day Special Round-Trip Fares	1-2
155d	R-51	Special Round-Trip Fares	2
155g	R-53	Special Xmas Fares—India-Europe	2-3
156b	R-54	Passenger Night Fares	2
164	R-61	Off-Season Fares	3
164a	R-62	Off-Season Fares—Europe-Middle East and Return	2
164d	R-64	Off-Season Fares, South America-Europe	1-2
165	R-65	Special Round-Trip Europe-Persian Gulf	2
165a	R-66	Special Fares, Persian Gulf-Europe	2
165b	R-67	Special Fares, Persian Gulf-Europe	2
166	R-68	Family Fares	1, 2
167	R-69	Student Fares	2, 3, 1-2, 2-3, 3-1
167a	R-70	Student Nurses Fares	2
[fol. 4543]			
171	R-71	Special Winter Resident Fares, Paris-Italy	2
171a	R-72	Resident Fares—Colombo-Singapore	3
172	R-73	B Fares, Athens-Cairo	2
172d	R-74	B Fares, Damascus or Beirut-Istanbul	2
172e	R-75	B Fares, Athens-Beirut	2
172f	R-76	B Fares, Rome-Beirut	2

IATA C.A.B. No.	No.	Title	Applicability
172g	R-77	B Fares, Athens-Alexandria	2
172j	R-78	B Fares, Athens-Khartoum	2
172m	R-80	B Fares, Rome-Athens	2
201	R-83	Children's Fares—Amending	1
250	R-88	Sleeper Surcharge	1, 2, 3, 1-2, 2-3, 3-1
311	R-98	Baggage Excess Weight Charges	Worldwide
311a	R-99	Charges for Specific Baggage Items	2
501	R-100	Minimum Charges for Cargo	Worldwide
502a	R-101	Low Density Cargo	2
503	R-102	Charges in Relation to Value	Worldwide
504	R-103	Lower Charge in Higher Weight Category	Worldwide
511a	R-104	Livestock	2
512a	R-105	C.O.D. Service Charge	Worldwide
530	R-107	Quantity Discounts	Worldwide
560	R-120	Special Rate for Gold, Platinum and Platinum Metals	Worldwide
561	R-121	Newspapers and Periodicals	Worldwide
562	R-122	Carriage of Human Remains	2
630	R-123	Diplomatic Bags	1-2, 2-3, 3-1, 1-2-3
051	R-142	Conference 1 Fares and Rates	1
051a	R-143	Specified Local Currency Rates and Fares	1

[fol. 4544]

002c R-8 Revalidation Resolution 1, 2, 3, 1-2, 1-2-3, except for those portions as to which we find in finding paragraph 3 that action should be deferred.

056 R-33 Normal Fares and Rates 3-1, except for those portions as to which we find in paragraph 5 that action should be deferred.

2. Subject to the general conditions in paragraph 1 we do not find the following resolutions or portions of resolutions to be adverse to the public interest or in violation of the Civil Aeronautics Act provided that this finding as to each resolution or portion of a resolution, or group of resolutions is subject to the conditions specified thereunder.

(a) 053 R-27 Normal Fares and Rates 3

(1) That proposed fares for regional services or regional operators shall apply only on two engine equipment.

(2) That such fares shall be available to any carrier using such equipment.

(3) That such fares are not to be used to promote combinations with through fares or construct any through fares.

(4) That the publishing of such fares in tariffs or time tables and the advertising and sale of tickets based on such fares is restricted to India, Ceylon and Pakistan.

(b) 014c R-13 Meeting Special Fares in other areas 2-3, 3-1, 1-2-3

That except with respect to the described substitution of continental tourist or coach service for transatlantic tourist service, the reduced fare is applied with the same restrictions that may be applicable to the fare being equalized.

(c) 017 R-16 Proration of Joint Fares and Rates Worldwide

That approval of this resolution does not constitute approval of any method of apportioning rates other than on a pro rata basis and that any agreement concluded by United States air carriers providing for apportionment upon any other basis shall be filed with the Board for review and action thereon.

(d) 115 R-37 Meeting Rates and Practices 1

That the notice referred to in Paragraph 3(c) of the resolution be circulated to all Members and

[fol. 4545] that air carrier Members file with the Board all notices received and sent pursuant to this resolution within 5 days from the date such notices are received or sent, or alternatively, arrange that the Conference Secretary send such notices to the Board at the time of circulation to the Members.

(e) 115a R-38 Meeting non-IATA competition in Middle East 2

115b R-39 Meeting non-IATA competition India-Africa 2-3

172k R-79 B-Fares in the Middle East 2

That air carrier Members file with the Board copies of all notices and protests received and sent pursuant to this resolution within 5 days from the date such notices or protests are received or sent, or, alternatively, arrange that the Conference Secretary send such notices and protests to the Board at the time of circulation to the Members.

(f) 159 R-58 Creative Fares 1, 2, 2-3

159a R-59 Special Round, Circle, Open-Jaw Trip Fares 3, 3-1

163 R-60 Special Event Fares 2, 2-3

(1) (a) That air carrier Members file with the Board copies of all notices and protests received and sent pursuant to this resolution within 5 days from the date such notices or protests are received or sent; or (b) alternatively, arrange that the Conference Secretary send such notices and protests to the Board at the time of circulation to the Members.

(2) That no proposed fare is to become effective if the Board should disapprove it within 35 days from the date of circulation of the original notice by the Conference Secretary (if (1)(*a*) above is employed) or within 20 days (if (1)(*b*) above is employed).

(g) 139 R-58(1) Creative Fares 1

That the first sentence of Note (1) shall be inapplicable to the resolution.

(h) 180 R-81(2) Africa Europe Tourist Service Program 2

That this tourist service program shall not become effective unless the Board approves the decision of the Conference required by paragraphs 3 and 4 of this resolution.

[fol. 4546]

(i) 200 R-82 Free and Reduced Fare Transportation Worldwide

That approval of this resolution by the Board shall not be construed as:

(a) an exemption from the requirements of filing tariff provisions as a condition precedent under Section 403 of the Civil Aeronautics Act, to the issuance of passes to any person described in the said resolution;

(b) a determination as to whether a violation of Section 404 of the Civil Aeronautics Act will result from the issuance of a pass to any person named in the said resolution pursuant to such resolution whether or not tariff provisions applicable hereto have been previously filed with the Board;

(c) an acceptance by the Board of any of the definitions or terms used in the said resolution.

(j) 810e R-134 Inclusive Tours Initiated by Producers 2

That reasonable modifications of a tour are limited to minor adjustments, involve no extra expense to the carrier and are applied alike to all passengers.

(k) 164c R-63 Off-Season Fares, India, Pakistan, Ceylon, Europe 2-3

Except as to paragraph (c) and (d) in which we find in paragraph 4 that action should be deferred,

That paragraph (h) thereof be construed to make the fares applicable to those points in Europe other than those listed in Appendix A for which the normal specified or constructed fares are lower than the normal specified or constructed fares to the European points listed in Appendix A.

3. We find that action should be deferred pending final Board action in the Free and Reduced Rate Transportation case, Docket No. 2737 et al on

204	R-85	Free or Reduced Fares for Tour Conductors	Worldwide
002e	R-8	Revalidation Resolution	1, 2, 3, 1-2, 1-2-3

insofar as it revalidates Resolutions 130/203, 250/263, 340/203 and JT 123 (3) 203, Reduced Fares for Agents.

4. We find that the resident fare provisions of paragraphs (c) and (d) of the following resolution may result in unjust discrimination and be adverse to the public in-
[fol. 4547] terest and that action should be deferred on said paragraphs 164c R-63 Off-Season Fares, India, Pakistan, Ceylon, Europe 2-3

5. We find that the following resolution may be adverse to the public interest by agreeing on uneconomically low cargo rates from the Orient and that action should be deferred thereon:

(a) Insofar as it would commonrate North American points other than the West Coast gateways with respect to cargo transportation to the Orient across the Pacific;

(b) Insofar as it would commonrate North American points other than the West Coast gateways and New York with respect to cargo transportation from the Orient across the Pacific;

(c) Insofar as it specifies cargo rates to New York from points in the Orient across the Pacific lower than required to equalize with cargo rates to New York from points in the Orient across the Atlantic, and provides a basis for construction under the provision of resolution JT31 (8) 044b of cargo rates from points in the Orient to any North

American point other than the West Coast gateways or New York which are lower than the lowest combination of rates available to such point by combining the rates from such points to a West Coast gateway or New York and the rates from the West Coast gateway or New York to points in the Orient.

056	R-33	Normal Fares and Rates	3-1

6. We find that the following resolutions result in agreements establishing rates or charges to be quoted or charged any nation for the transportation of mail and that action [fol. 4548] thereon should be deferred because participation therein by any United States air carrier would violate the condition on such air carrier participation in IATA traffic conferences imposed by Order Serial No. E-3888, dated February 9, 1950.

652	R-124	Air Mail Conference UPU/IATA	Worldwide
655	R-125	Standard Postal Distances for Foreign Air Mail	Worldwide

7. We find that the following resolution may be adverse to the public interest in permitting the furnishing of first class service at tourist or coach fare and that action should be deferred thereon.

014e	R-15	Special Canadian Construction Rule	1-2, 1-2-3

8. We find that the following resolutions may be adverse to the public interest in that they promote uneconomic competition through permitting the furnishing of free and reduced rate transportation and that action should be deferred thereon.

203b	R-84	Educational Tours for Agents	2
209	R-86	Free Transportation—Public Relations	2, 3, 2-3
210	R-87	Free Transportation—Personal	2, 3, 2-3

9. We find that the following resolution provides for fares in air transportation which may be unjustly discriminatory and may result in uneconomic rate reductions; that such resolution may be adverse to the public interest

and in violation of the Civil Aeronautics Act; and that action should be deferred thereon:

810g R-135 Air Tour Construction Fares

Accordingly, IT IS ORDERED THAT:

1. The agreements embodied in the resolutions or portions of resolutions listed in finding paragraphs 1 and 2 be, and they hereby are, approved subject to the conditions, provisions, or limitations specified with respect to each in said finding paragraphs;

[fol. 4549]

2. Action on the agreements embodied in the resolutions listed in finding paragraph 3 be deferred pending final Board action in the Free or Reduced Rate Transportation Case, Docket No. 2737 et al;

3. Action on the agreements embodied in the resolutions or portions of resolutions listed in finding paragraphs 4 through 9 be deferred.

IT IS FURTHER ORDERED THAT:

1. Any air carrier party to any resolution which has been approved above subject to a condition, provision, or limitation may within 15 days of the date hereof petition for reconsideration or modification of such condition, provision or limitation, which petition shall be accompanied by the reasons and data in support thereof.

2. Any air carrier party to a resolution as to which action has been deferred in whole or in part, (other than a resolution listed in finding paragraph 3) may within 15 days of the date hereof submit in writing such reasons as it deems appropriate for not disapproving such resolution or portions thereof together with supporting data, and may, in addition, request a hearing thereon.[2]

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

[2] If no protest is received within 15 days from the date of this order with respect to any such resolution or any part of any such resolution, the Board will by subsequent order disapprove said resolution.

[fol. 4549a]

United States District Court
SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

against

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.

Defendants.

[redacted]

Statistical Exhibits

Submitted By

PAN AMERICAN WORLD AIRWAYS, INC.

Volume I

[fol. 4550]

PAN AMERICAN WORLD AIRWAYS, INC.

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PAN AMERICAN WORLD AIRWAYS, INC.

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[fol. 4552]

Pan American World Airways Inc.,
Statistical Exhibit 1 .

Pan American World Airways, Inc.
Description Of Aircraft Used By Latin American Division
Years 1929 - 1958

Aircraft Model	Number of Engines	Passenger Seating Capacity	Cruising Speed
Fokker C-2	3	10	85
Fokker F-7	3	10	85
Loening	1	4	85
Keystone	3	10	85
Fairchild FC-2	1	2	90
Sikorsky D-36	2	6	95
Fokker F-10	3	12	115
Fokker F-10A	3	12	115
Ford 5-AT	3	12	115
Fairchild 71	1	5	110
Sikorsky S-38	2	8	105
Commodore	2	20	101
Sikorsky S-41	2	10	100
Sikorsky S-40	4	36	110
Sikorsky S-42	4	28	155
Sikorsky S-42B	4	32	150
Sikorsky S-43	2	14	150
Lockheed Electras	2	8	160
Douglas DC-2	2	14	165
Douglas DC-3	2	21	175
Douglas DC-3A	2	21	175
Boeing B-307	4	33	185
Fleetster	1	4	110
Martin M-130	4	32	130
Boeing B-377	4	52-107	260
Douglas DC-6A	4	57-106	290
Douglas DC-6B	4	57-109	290
Douglas DC-7B	4	58-88	335
Douglas DC-7C	4	58-88	325
Douglas DC-4	4	52-78	210
Douglas DC-6	4	55-70	280
Lockheed Constellation	4	44-68	270
Convair 240	2	40	275
Curtiss C-46	2	All cargo	215

Source: CAB Docket No. 779, Exhibit No. P-20.
CAB Docket No. 9921 et al. Exhibit No. PA-10.

[fol. 4553]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 2

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1928
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Fokker	F-7	1	Key West-Havana, Miami-Havana
Fokker	C-7	1	Key West-Havana, Miami-Havana
Fokker	F-10A	2	Miami-Havana
Sikorsky	S-38	2	Key West-Havana, Miami-Havana
Fairchild	FC-2	1	Training
Loening		2	
Ford	5-AT	1	Not Used
Keystone		1	Not Used
Total		11	

Year 1929
Eastern Division

Fokker	F-10A	10	Miami-San Juan, Miami-Havana
Fokker	F-10	1	Miami-San Juan, Miami-Havana
Sikorsky	S-38	14	Miami-Nassau, Miami-Havana, Cristobal-Guayaquil, Cristobal-Curacao, Miami-Havana-Belize-Cristobal (Jan.-March), Miami-Managua (Apr.-Nov.), Miami-Tela (Dec.), San Juan-Port of Spain-Paramaribo (beg. in Sept.)
Ford	5-AT	4	Managua-Cristobal (Apr.-Nov.), Havana-Santiago, Cuba-Cristobal, Tela (Dec.)



Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of
Route on wh[illegible]craft Types Used

Year 1930
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Fokker	F-10A	7	Miami-San Juan
Fokker	F-10	1	Miami-San Juan
Sikorsky	S-38	19	Miami-Tela (Oct.-Dec.), Cristobal-Curacao, Cristobal-La Guaira (Oct.-Dec.), San Juan-Paramaribo until June 1930, San Juan-Rio beg. in June until October, Havana-Camaguey (July-Nov.), Miami-Nassau, Miami-Havana-Puerto Cabezas-Cristobal until 12/2/30
Sikorsky	S-41	1	
Ford	5-AT	6	San Lorenzo-Cristobal, Tela-Cristobal. Two used by Panair do Brasil
Stearman		2	Trainihg, San Jose-Puntarenas until 8/11/30
Fairchild		4	San Jose-Puntarenas after 8/11/30
Fleetster		5	Stored at B. A. - taken over from NYRBA
Fleet		3	Stored at B. A. - taken over from NYRBA
Commodore		10	Miami-Rio in October and November. Thereafter San Juan-Port of Spain-Belem only*, Miami-Cienfuegos-Kingston-Cristobal beginning 12/2/30
Lockheed		2	Used by Panair do Brasil
Total		60	

* After Nov. 1930, the Belem-Rio route was operated by Panair do Brasil.

[fol. 4555]

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1931
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Fokker	F-10A	5	Miami-San Juan, Miami-Havana
Fokker	F-10	1	Miami-San Juan, Miami-Havana
Sikorsky	S-38	14	Miami-San Lorenzo, after 4/29/31 Miami-Salvador, Miami-Belem, Cristobal-La Guaira, Miami-Nassau, beginning 5/1/31 Barranquilla-Port of Spain
Sikorsky	S-40	2	Miami-Kingston-Barranquilla-Cristobal, Miami-San Juan, proving flights (Nov.-De.)
Sikorsky	S-41	2	Miami-Belem
Ford	5-AT	4	San Lorenzo-Cristobal
Stearman		1	Training
Fairchild		3	Training, San Jose-Puntarenas
Fleetster		5	Stored at B. A. -taken over from NYRBA
Commodore		8	Miami-Barranquilla-Cristobal, Miami-Belem, beginning 12/19/31 Miami-Havana, Miami-Nassau
	Total	45	

Year 1932
Eastern Division

Fokker	F-10	1	Miami-San Juan
Sikorsky	S-38	10	Miami-Merida-Salvador, San Juan-Belem, San Juan-Kingston, San Juan-Ponce, San Juan-St. Croix, Barranquilla-Port of Spain, Miami-Nassau
Sikorsky	S-40	3	Miami-San Juan, Miami-Havana, Miami-Barranquilla-Cristobal (June-Dec.)



Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Type Used

Year 1932 (Cont'd.)
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-41	2	Miami-Merida-Salvador, Miami-Belem, Barranquilla-Port of Spain
Fairchild		1	Training
Fleetster		5	Stored
Commodore		8	Miami-Belem, Miami-Barranquilla-Cristobal, Miami-Havana, Miami-Nassau
Eastern Div. Total		30	

Western Division*

Ford	5-AT	4	Brownsville-Cristobal
Fokker	F-10A	4	Used in Mexico by Aerovias Centrales
Sikorsky	S-38	2	Merida-San Salvador, Cristobal-Medellin
Fairchild		3	Brownsville-Cristobal
Stearman		1	Training
Western Div. Total		14	
Grand Total		44	

*Note: Prior to 1932 all Western Division Flight Equipment was carried on the books of Compania Mexicana de Aviacion.

[fol. 4557]

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1933

Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	7	Miami-Merida; after 2/1/33 Havana-Merida, San Juan-Belem, Barranquilla-Port of Spain, San Juan-Kingston, after 2/6/33 Kingston-St. Domingo, San Juan-St. Croix
Sikorsky	S-40	3	Miami-Barranquilla-Cristobal, Miami-San Juan, Miami-Havana, Miami-Nassau (Dec.)
Sikorsky	S-41	2	Miami-Merida, after 2/1/33 Havana-Merida, San Juan-Belem, Barranquilla-Port of Spain, Miami-Nassau
Commodore		8	Miami-Barranquilla-Cristobal, Miami-Belem, Miami-Havana, Miami-Nassau, after 12/4/33 Tampa-Havana
Eastern Division Total		20	

Western Division

Ford	5-AT	5	Brownsville-Cristobal
Sikorsky	S-38	2	Merida-San Salvador, Cristobal-Medellin.
Fairchild	71	1	Training
Stearman		1	Training
Western Division Total		9	
Grand Total		29	



Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1934
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	8	Miami-Merida, Kingston-Sto. Domingo, Port of Spain-Barranquilla, Miami-Havana, Miami-Nassau (June)
Sikorsky	S-40	3	Miami-Barranquilla, Miami-San Juan, Miami-Havana, Miami-Nassau
Sikorsky	S-41	2	Miami-Merida, San Juan-Belem, Port of Spain-Barranquilla, Miami-Nassau (May)
Sikorsky	S-42	2	Miami-San Juan
Commodore		8	Miami-Barranquilla-Cristobal, Miami-Belem, Miami-Havana, Miami-Nassau, Tampa-Havana.
Clark	GA-43	1	Not used
Eastern Div. Total		24	

Western Division

Ford	5-AT	4	Brownsville-Cristobal
Sikorsky	S-38	1	Merida-San Salvador
Fairchild	71	1	Training
Douglas	DC-2	3	Brownsville-Mexico City
Western Div. Total		9	
Grand Total		33	

[fol. 4559]

PAN AMERICAN

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1935
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	7	Miami-Merida, Port of Spain-Barranquilla (Jan.-Nov.), beg. in May Maracaibo-Port of Spain, Kingston-Sto. Domingo, Miami-Havana, Rio-Buenos Aires (Nov.)
Sikorsky	S-40	3	Miami-Baranquilla, Miami-Havana, Miami-Nassau
Sikorsky	S-41	2	San Juan-Rio, Port of Spain-Barranquilla
Sikorsky	S-42	3	Miami-San Juan, (1st 6 months), Miami-Belem beg. Nov. 1,. 1935 Miami-Buenos Aires
Commodore		6	Miami-Barranquilla-Cristobal, Miami-Belem, Miami-Havana, Miami-Nassau
Fairchild		2	Training
Lockheed Electra		2	Leased to Cubana
Eastern Division Total		25	

Western Division

Ford	5-AT	1	Brownsville-Cristobal
Douglas	DC-2	7	Brownsville-Cristobal
Commodore		1	Cristobal, Standby
Lockheed Electra		2	Leased to Aerovias Centrales, S. A. Used on Los Angeles-Mexico route
Western Division Total		11	
Grand Total		36	

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1936
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	5	Maracaibo-Port of Spain, Havana-Merida-Belize, Rio-B. A. (5 months), Kingston-Sto. Domingo (8 months), Kingston-Port au Prince, Kingston-San Juan
Sikorsky	S-40	3	Miami-Barranquilla, Miami-Nassau, Miami-Havana
Sikorsky	S-41	2	Barranquilla-Port of Spain
Sikorsky	S-42	6	Miami-Barranquilla, Miami-Buenos Aires
Sikorsky	S-43	6	Miami-Barranquilla-Cristobal, Barranquilla-Port of Spain, Miami-San Juan (1 mo.), Miami-Buenos Aires (1 mo.), Miami-Rio (3 mo.)
Commodore		5	Miami-Nassau, Miami-Havana, Miami-Barranquilla (1st half year); Miami-Buenos Aires (1st. half of year), Miami-San Juan(2nd half of year)
Fairchild		1	Training
Lockheed Electra		3	Leased to Cubana
Clark	GA-43	1	Not used
Eastern Div. Total		32	

Western Division

Ford	5-AT	3	Guatemala-Cristobal
Douglas	DC-2	5	Brownsville-Cristobal
Fairchild	71	1	Training
Western Div. Total		9	
Grand Total		41	

[fol. 4561]

PS 2
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Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1937
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	2	Miami-Merida-Belize
Sikorsky	S-40	3	Miami-Nassau, Miami-Havana
Sikorsky	S-41	2	Miami-Merida-Belize (Sept.-Dec.)
Sikorsky	S-42	7	Miami-Barranquilla-Cristobal, Kingston-Cristobal (Dec. only), Miami-Rio A. In Dec. Miami-Rio only. Miami-Havana, (Jan.-May).
Sikorsky	S-43	6	Cristobal-Port of Spain, Miami-Belem (first 1/2 of yr.) Miami-Rio(last 1/2 of yr.)
Commodore		3	Miami-Nassau, San Juan-Kingston
Douglas	DC-3	2	Rio-Buenos Aires
Lockheed Electra		4	Leased to Cubana
Eastern Div. Total		29	

Western Division

Ford	5-AT	2	Tapachula-Cristobal
Douglas	DC-2	4	Brownsville-Cristobal
Douglas	DC-3	4	Brownsville-Cristobal, Cristobal-La Guaira
Fairchild	71	1	Training
Commodore		1	Standby
Western Div. Total		12	
Grand Total		41	



Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1938
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	2	Miami-Merida-Belize. Training
Sikorsky	S-40	3	Miami-Nassau, Miami-Havana. Training
Sikorsky	S-41	1	Miami-Merida. Training.
Sikorsky	S-42	7	Miami-Barranquilla-Cristobal, Miami-Kingston-Cristobal, Miami-Havana, Miami-Rio. Beg. in June Miami-Maracaibo
Sikorsky	S-43	6	La Guaira-Port of Spain, Miami-Rio, San Juan-Kingston
Commodore		4	Miami-Cat Cay. Training
Lockheed Electra		3	Leased to Cubana
Douglas	DC-3	2	Rio-Asuncion-Buenos Aires, Rio-Porto Alegre-B. A.
Eastern Div. Total		28	

Western Division

Ford	5-AT	1	Cristobal-Panama City, Training
Douglas	DC-2	4	Brownsville-Cristobal-Barranquilla
Douglas	DC-3	3	Brownsville-Cristobal-La Guaira
Fairchild	71	1	Training
Western Div. Total		9	
Grand Total		37	

[fol. 4563]

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1939

Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	2	Training
Sikorsky	S-40	3	Miami-Nassau, Miami-Havana
Sikorsky	S-41	1	Miami-Merida(last 1/2 of year), Training
Sikorsky	S-42	7	Miami-Kingston-Barranquilla, Kingston-Cristobal, Miami-Havana, Miami-Rio, Miami-Maracaibo
Sikorsky	S-43	5	Miami-Rio, Miami-Merida, La Guaira-Port of Spain, Kingston-San Juan
Commodore		3	Miami-Cat Cay - Training
Lockheed Electra		3	Leased to Guiana
Douglas	DC-3	2	Rio-Asuncion, Buenos Aires, Rio-Porto Alegre-Buenos Aires
Eastern Div. Total		26	

Western Division

Ford	5-AT	1	Cristobal-Panama City - Training
Douglas	DC-2	3	Brownsville-Cristobal
Douglas	DC-3	4	Brownsville-Cristobal-La Guaira
Fairchild	71	1	Training
Western Div. Total		9	

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1940
Eastern Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Sikorsky	S-38	2	Training
Sikorsky	S-40	3	Miami-Nassau, Miami-Havana (Jan.-Aug.), Training
Sikorsky	S-42	7	Miami-Kingston-Barranquilla, (Jan.-Aug.) Kingston-Cristobal, Miami-Havana, Miami-Maracaibo, Miami-Rio (Until Aug.), Miami-San Juan
Sikorsky	S-43	4	Miami-Rio, Kingston-San Juan, Miami-Merida (May-Dec.)
Commodore		3	Miami-Cat Cay, Training, Beginning Oct. 1940 Navigation School
Douglas	DC-3A	4	Rio-Asuncion-Buenos Aires, Rio-Porto Alegre-Buenos Aires, Belem-Barreiras-Rio (Sept.-Dec.), Training
Boeing	B-307	3	(Sept.-Oct.) Miami-Cristobal, (Nov.-Dec.) Miami-Balboa, (Jul.-Aug.) Miami-Barranqu Mia mi-San Juan (Aug.), Miami-Belem (Sept.-De..)
Stinson	SR-10J3	1	Training
	Eastern Div. Total	27	

Western Division

Douglas	DC-3 &		Brownsville-Cristobal-LaGuaira Cristobal-

[fol. 4565]

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1940 (Cont'd.)
Western Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Stinson	SR-10J3	1	Training
Western Div. Total		11	
Grand Total		38	

Year 1941
Eastern Division

Sikorsky	S-38	1	Training
Sikorsky	S-40	3	Miami-Nassau (Jan.-May), Miami-Cat Cay, Navigation School
Sikorsky	S-42	6	Miami-Kingston-Barranquilla, Kingston-Cristobal (extra flights), Miami-San Juan, Miami-Havana (Jan.-June)
Sikorsky	S-43	4	Miami-Rio, Kingston-San Juan, Miami-Merida (Jan.-Feb.), Miami-Nassau
Commodore		5	Navigation School
Douglas	DC-3A	4	Training, Belem-Barreiras-Rio, Rio-Buenos Aires, Miami-Havana, (Jul.-Dec.), Miami-Merida (Feb.-Dec.), Miami-Nassau
Boeing	B-307	3	Miami-Balboa, Miami-Belem
Stinson	SR-10J3	1	Training
Rearwin		1	Training
Cessna	T-50	2	Training
Eastern Div. Total		35	

Pan American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1941 (Cont'd.)
Western Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Douglas	DC-3A	12	Brownsville-Cristobal-Port of Spain
Stinson	SR-10J3	1	Training
Cessna	T-50	1	Training
Western Div. Total		14	
Grand Total		49	

Year 1942
Eastern Division

Sikorsky	S-40	1	Navigation School
Sikorsky	S-42	4	Miami-Kingston-Barranquilla, Miami-San Juan Miami-Maracaibo (Jan.-Oct.), Miami-Nassau, one chartered to Defense Supplies Corporation
Sikorsky	S-43	2	Miami-Belem, Belem-Rio(Jan.-Aug.), San Juan-Kingston, Miami-Nassau
Commodore		4	Navigation School
Douglas	DC-3A	19	Miami-La Guaira (Oct.-Dec.), Miami-Havana, Miami-Nassau, Miami-Merida, Miami-San Juan, Miami-Rio(June-Dec.), Belem-Barreiras-Rio, Rio-Asuncion-Buenos Aires, Rio-Porto Alegre-Buenos Aires
Boeing	B-307	3	Miami-Belem(Jan. May), Miami-Balboa, Miami-San Juan (Jan.-Sept.)
Stinson	SR-10J3	5	Training
Cessna	T-50	2	Training
Lockheed Electra		1	Training

[fol. 4567]

PS 2
Page 15 of 15 Pages

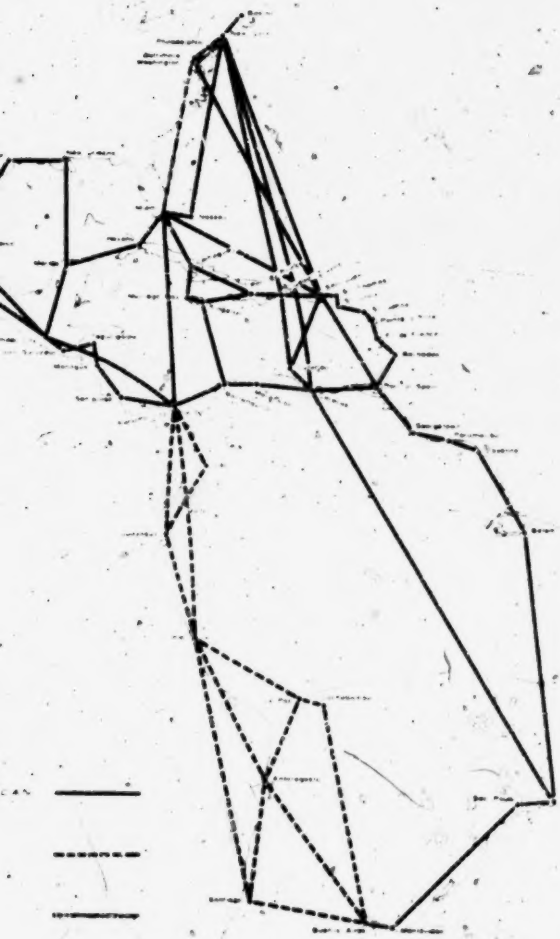
Par American World Airways, Inc.
History of Changes in Flight Equipment and Sectors of Route on which Aircraft Types Used

Year 1942 (Cont'd.)
Western Division

Name	Type	Number Owned as of Dec. 31	Sectors on which Equipment Used
Douglas	DC-3A	10	Brownsville-Balboa-Port of Spain
Douglas	C-53	2	Brownsville-Balboa
Stinson	SR-10J3	2	Training
Cessna	T-50	1	Training
Western Div. Total		15	
Grand Total		56	

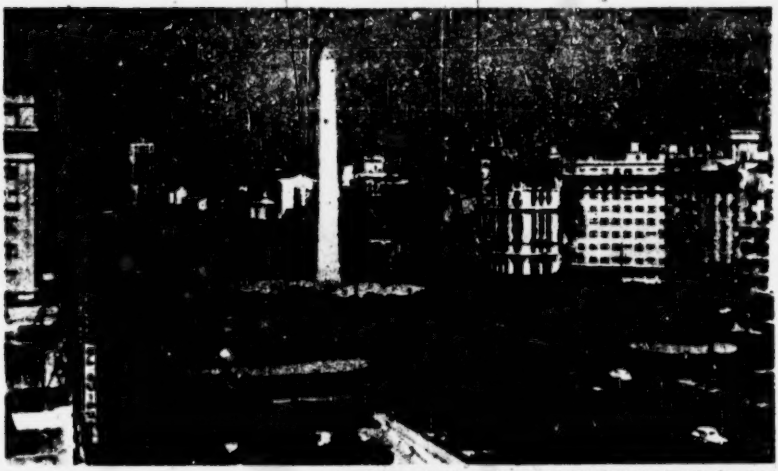
PAN AMERICAN
WORLD AIRWAYS INC

TIN AMERICAN ROUTES OF
PAN AMERICAN - PANAGRA



PAN AMERICAN
WORLD AIRWAYS INC.

Pan American World Airways Int'l
Example of Through Service Advertising
1951



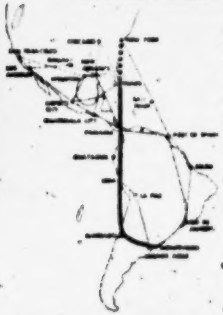
Buenos Aires is second only in population to New York and Chicago, in this hemisphere. Its streets are all a Champs Elysées and Boulevards. You don't know South America until you've seen Buenos Aires.

FLY *El Inter Americano* to SOUTH AMERICA



From Miami to Lima, sleep in a real bed-sized berth for a minimum extra charge. Lower unoccupied.

Daily DC-6 service to Panama, 4½ hours; Guayaquil, 8½ hours; Lima, 11 hours; Santiago, 17 hours; Buenos Aires, 18½ hours from Miami



Aboard El Inter Americano you fly over the routes of Pan American and Panagra . . . straight jet from Miami, direct South America's West Coast to Santiago, then over to Buenos Aires . . . the shortest distance from the U.S.A. One way fare is $[illegible] from Miami. 10% off on round trips.

En route visit Panama, Guayaquil, Ecuador, seaport; Lima, center of Spanish culture; scenic Arequipa . . . mass transporting more than ever before. Enjoy super service throughout your flight . . . luxurious leather chairs with complimentary cocktails and wines, including Pierre Lorillard to leave Panagra passengers personal attention in the air and on the ground by Pan American and Panagra (Pan American-Grace Airways) . . . two airlines with 22 years experience in South America.

Let us help you plan an itinerary that takes you to all or more of the six republics of South America. You can see them all on the most amazing flights on the continent . . . and keep your vacation within a month's vacation. It's easy to arrange. More countries do not require visas.

Call your Travel Agent or— STillwell 6-0600

Ticket Offices: 30 Rockefeller Center, New York; 200 Broadway, New Orleans, Louisiana; [illegible]

PAN AMERICAN-GRACE AIRWAYS

ONLY U. S. AIRLINE WITH 22 YEARS OF EXPERIENCE ON SOUTH AMERICA'S WEST COAST

[illegible]
Newspapers—1951

United States District Court
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

against

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.

Defendants.

PS-101 through PS-129

PAN AMERICAN WORLD AIRWAYS, INC.

STATISTICAL EXHIBITS

Prepared By

UNITED RESEARCH, INC.

CAMBRIDGE, MASSACHUSETTS

[fol. 4620]

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PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 101

Comparative Density Of Air Passenger Traffic Flow Over U. S. - South American Routes And Other Major Categories Of U. S. Air Routes
1957

	Revenue Passenger Miles Flown (000)	Route Miles Operated	Revenue Passenger-Miles per Route Mile per Day
Domestic Trunk Operations	24,499,510	60,599	917.8
Local Service Carriers	747,288	25,563	80.0
Foreign and Overseas Operations 1/	5,391,027	103,563	142.6
Pan American (LAD) 2/			
Within South America	143,442	5,517	71.2
South America plus Miami-Balboa Sector	212,185	6,683	87.0
Panagra	168,641	5,458	84.6
Braniff			
South of Balboa	45,317	4,887	25.4
International Division	92,381	7,092	35.7

1/ Exclusive of Pan American (LAD), Panagra, and Braniff (International).

2/ Revenue passenger miles determined from segment traffic data reported to ICAO for the months of March and September 1957. Data for these months are annualized by multiplying the sum of March and September by a factor of 6.

Source: Civil Aeronautics Board, Monthly Report of Air Carrier Traffic Statistics, December 1957.
ICAO Digest of Statistics, March and September, 1957.

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 102

Comparative Density Of Air Passenger Traffic Flow For Pan American (LAD), Panagra, Braniff (International) And Local Service Carriers

1957

Carrier	Revenue Pass. Miles (000)	Route Miles	RPM's per Route Miles per day
Southwest	70,000	1,172	163.6
Mohawk	79,587	1,348	161.8
Allegheny	76,845	1,658	127.0
Piedmont	82,656	1,871	121.0
North Central	10,350	2,365	120.4
Pan American (LAD) [1/] South America plus Miami-Balboa Sector	212,185	6,683	87.0
Panagra	168,641	5,458	84.6
Pan American (LAD) [1/] Within South America	143,442	5,517	71.2
West Coast	44,720	1,728	70.9
Bonanza	32,023	1,283	68.4
Ozark	62,941	2,762	62.4
Trans Texas	54,220	2,761	53.8
Frontier	57,620	2,976	53.0
Southern	37,518	1,949	52.7
Lake Central	25,171	1,448	47.6
Braniff International Division	92,381	7,092	35.7
Central	23,244	2,252	28.3
Braniff South of Balboa [1/]	45,317	4,887	25.4

[fol. 4624]

Changes In Income And Expenses Under Alternative
Three Carrier Route Patterns Between The U.S. And South America
Pan American (LAD)
1957

13/ Increased Passenger Revenue ($2,775,000) x 1957 PAA-LAD experienced per cent Advertising of Passenger Revenue (5.3%).
14/ Increased Total Revenue ($3,236,000) x 1957 PAA-LAD experienced per cent Commissions are of Passenger Revenue (5.0 per cent).
15/ Increase in Other Cash Expenses ($4,841,000) x 1957 PAA-LAD experienced per cent General and Administrative Expenses of Other Cash Expenses (5.3%).
16/ Three DC-7's @ $2,200,000 depreciated 7 years to 10 per cent residual ($848,571) plus Ground Equipment Depreciation on Exhibit PS-123 ($42,000).

Source. Form 41 Reports to CAB.

Comparative Density Of Air Passenger Traffic Flow
For Pan American (LAD), Panagra, Braniff
(International) And Local Service Carriers

1957

1/ Revenue passenger miles determined from segment traffic data reported to ICAO for the months of March and September 1957. Data for these months are annualized by multiplying the sum of March and September by a factor of 6.

Source Civil Aeronautics Board, Monthly Report Of Air Carrier Traffic Statistics, December 1957.

ICAO Digest Of Statistics, March and September 1957.

[fol. 4625]

Pan American World Airways Inc.,
Statistical Exhibit 103

Number Of U. S. Air Carriers
Serving South American Cities (Including Balboa)
And Volume Of Traffic Enplaned
1957

City 1/	No. of Enplaned Passengers	No. of U. S. Carriers Serving
Balboa, Canal Zone	89,918	2 2/
Caracas, Venezuela	48,784	2
Buenos Aires, Argentina	37,271	2 2/
Lima, Peru	23,131	2
Santiago, Chile	17,138	1
Quayaquil, Ecuador	15,597	2
*Quito, Ecuador	14,107	1
Rio de Janeiro, Brazil	12,982	2
La Paz, Bolivia	8,306	2
Sao Paulo, Brazil	7,658	2
Barranquilla, Colombia	7,455	1
Cali, Colombia	5,889	1
*Maracaibo, Venezuela	4,702	1
*Montevideo, Uruguay	4,374	1
*Asuncion, Paraguay	3,705	2
Santa Cruz, Bolivia	3,096	1
Cochabamba, Bolivia	2,732	1
Cuenca, Ecuador	2,683	1
Bogota, Colombia	2,567	1
Paramaribo, Surinam	2,083	1
Belem, Brazil	1,909	1
Talara, Peru	825	1
Cayenne, French Guiana	780	1
Medellin, Colombia	744	1
Manta, Ecuador	597	1
Antofagasta, Chile	564	1
Oruro, Bolivia	555	1
Porto Alegre, Brazil	537	1
San Ignacio, Bolivia	475	1
Arica, Chile	401	1
Concepcion, Bolivia	352	1
San Jose, Bolivia	331	1
Esmeralda, Ecuador	254	1
Robore, Bolivia	217	1
Puerto Suarez, Bolivia	196	1
Arequipa, Peru	77	1

Additional carriers authorized but not providing service

1/ Cities ranked in order of number of passengers enplaned by U. S. carriers

2/ Pan American and Panagra consolidated data

Source: Statistical Reports of CAB, Table 10 of Official CAB Route Maps

[fol. 4626]

PAN AMERICAN WORLD AIRWAYS INC., STATISTICAL EXHIBIT 104

Number Of U. S. Air Carriers Serving South American Cities (Including Balboa) And Volume Of Passenger Traffic Exchanged With The U. S.
1957

Cities	Passengers 1/	U. S. Carriers Serving
Caracas, Venezuela	43,092	2
Balboa, Canal Zone	36,336	2 2/
Buenos Aires, Argentina	19,116	2 2/
Lima, Peru	15,072	2
Rio de Janeiro, Brazil	9,234	2
*Maracaibo, Venezuela	9,234	1
Sao Paulo, Brazil	6,402	2
Bogota, Colombia	6,174	1
Santiago, Chile	4,830	1
Guayaquil, Ecuador	3,942	2
Cali, Colombia	3,210	1
*Quito, Ecuador	2,856	1
Barranquilla, Colombia	2,712	1
La Paz, Bolivia	2,010	2
*Montevideo, Uruguay	1,530	
Belem, Brazil	972	
Talara, Peru	870	
Paramaribo, Surinam	870	1
Medellin, Colombia	774	1
Antofagasta, Chile	702	1
*Asuncion, Paraguay	474	1
Cochabamba, Bolivia	294	1
Porto Alegre, Brazil	138	1
Oruro, Bolivia	126	1
Arica, Chile	66	1
Cayenne, Fr. Guiana	54	1
Arequipa, Peru	47	1
Santa Cruz, Bolivia	18	1
Cuenca, Ecuador	6	1
Concepcion, Bolivia	6	1

* Additional carrier authorized but not providing service.

1/ Number of annual passengers exchanged with U. S. points.

2/ Pan American and Panagra considered as one carrier.

Source: Civil Aeronautics Board, Airline Traffic Survey, March and September, 1957.

[fol. 4627]

Pan American World Airways Inc.,
Statistical Exhibit 105

Volume Of Air Passenger Traffic Between
The U. S. And Foreign Cities Receiving Service
From Two Or More U. S. Flag Carriers
1957

Between the U. S. and	No. of Passengers	No. of U. S. Carriers	No. of Passengers Per Carrier
Nassau, Bahamas	172,122	2	86,061
Montreal, Quebec	168,336	2	84,168
Hamilton, Bermuda	137,100	2	68,550
Havana, Cuba	301,734	5	60,347
Mexico City, Mexico	154,500	4	38,625
London, England	61,152	2	30,576
Paris, France	50,568	2	25,284
Rome, Italy	48,102	2	24,051
Caracas, Venezuela	43,692	2	21,846
Balboa, Canal Zone	36,336	2 1/	18,168
Frankfurt, Germany	30,732	2	15,366
Montego Bay, Jamaica	26,286	2	13,143
Tokyo, Japan	24,036	2	12,018
Shannon, Ireland	21,270	2	10,635
Port au Prince, Haiti	19,662	2	9,831
Buenos Aires, Argentina	19,116	2 1/	9,558
Lima, Peru	15,072	2	7,536
Edmonton, Alberta	14,346	2	7,173
Manila, Philippine Islands	13,278	2	6,639
Ciudad Trujillo, Dom. Rep.	15,402	3	5,134
Rio de Janeiro, Brazil	9,234	2	4,617
Sao Paulo, Brazil	6,402	2	3,201
Lisbon, Port.	6,036	2	3,018
Guayaquil, Ecuador	3,942	2	1,971
Santa Maria, Azores	2,106	2	1,053
La Paz, Bolivia	2,010	2	1,005
Gander, Newfoundland	1,830	2	915

Indicates city in South America or Canal Zone

1/ Pan American and Panagra considered as one carrier.

Source: Civil Aeronautics Board, Survey of Air Traffic, March and September, 1957.

[fol. 4628]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 106

of 1 Page

Comparative Development Of Air Passenger Traffic Between The U. S. And South America And Between The U. S. And Other Major Geographic Areas Of The World
Fiscal Year 1957

Area	Number of Passengers Fiscal Year 1957 1/	Gross National Product 2/ (000,000)	Passe Milli Gros
South America (All Countries in South America Plus the Canal Zone)	272,055	$ 37,185	
Europe (Includes the United Kingdom, W. Germany, France, Scandanavia, and Italy)	755,977	200,614	
Australia and Asia (Includes the Philippine Islands, Japan, Australia, and India)	168,206	66,645	

1/ From Immigration and Naturalization Service Annual Report, 1957

2/ Gross National Product in millions of 1956 U. S. dollars.

Source: U. N. Statistical Yearbook, 1957.

Pan American World Airways, Inc
Example of Pan American-Panagra-National Advertising
of New York-Buenos Aires Interchange Service
1956



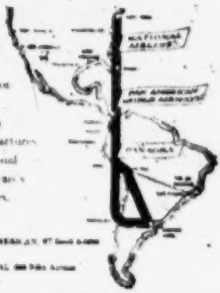
5 hours faster

than any other service from

New York to Buenos Aires

— and no change of plane

Your finest, fastest way to South America is by first class Star flights of *El Inter-Americano* DC 7B. Radar for smooth flight, day and night. Daily service. Now, with new excursion fares - 20% off your Travel Agent offers tours *at the lowest cost ever.* Fly now - Pay later! Convenient p.m. departures on the shortest possible way via National Airlines route to Miami, Pan American to Panama, Panagra c/to Buenos Aires.



National · Pan American · Panagra

National Airlines — Pan American World Airways — Pan American-Grace Airways

PAN AMERICAN
WORLD AIRWAYS INC

Pan American World Airways, Inc.
Example of Pan American-Panagra
Round South America Service Advertising
1958

30% off your fare...
low prices while you're there

Now's the time to Skycruise amazing South America



PANAGRA
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PAN AMERICAN
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Pan American World Airways Inc., Statistical Exhibit 107

OPERATING RATIOS

Pan American (LAD), Panagra, and Braniff (International) and U. S. Domestic Trunk Lines

Total Operating Revenues (000) 1/

Year	Domestic Trunk Lines	Pan American (LAD)	Panagra	Braniff	PA, PG, BN Total
1947	$ 352,490	$ 58,578	$ 13,644		$ 72,222
1948	413,353	62,244	15,639	$ 1,130	79,013
1949	459,785	65,513	16,826	3,926	86,265
1950	524,109	59,989	15,288	5,664	80,941
1951	658,521	64,802	16,143	7,593	88,538
1952	768,015	69,785	17,310	8,778	95,873
1953	878,753	74,149	17,698	8,711	100,558
1954	976,218	77,046	18,717	9,629	105,444
1955	1,133,348	75,470	17,479	7,263	101,212
1956	1,262,881	88,039	20,005	7,538	115,582
1957	1,419,614	93,855	20,158	8,566	122,579
1947-1957	8,849,125	790,022	189,407	68,798	1,048,227

Total Operating Expenses (000)

1947	$ 373,390	$ 58,474	$ 15,491		$ 73,965
1948	411,278	59,420	14,803	$ 1,282	75,505
1949	435,157	61,824	15,408	3,921	81,153
1950	461,538	57,684	13,342	5,577	76,603
1951	552,581	65,080	14,485	7,708	87,273
1952	672,892	72,381	15,730	10,109	98,220
1953	790,421	68,625	16,095	9,112	93,832
1954	876,759	68,958	17,138	7,829	93,925
1955	1,010,063	72,838	17,072	7,762	97,672
1956	1,162,988	85,316	18,467	6,663	110,448
1957	1,377,576	95,279	19,444	7,888	123,111
1947-1957	8,126,643	766,381	177,475	67,851	1,011,707

Operating Ratio (%) 2/

1947	105.9	99.8	113.5		102.4
1948	99.5	95.5	94.7	113.5	95.6
1949	94.6	94.3	91.6	99.9	94.1
1950	88.1	96.2	87.3	98.5	94.6
1951	83.9	100.4	89.7	101.5	98.6
1952	87.6	92.5	90.9	115.2	102.4
1953	89.9	92.5	90.9	104.6	93.3
1954	89.8	89.4	91.6	81.3	89.1
1955	89.1	95.9	97.6	106.8	96.5
1956	92.1	96.9	92.3	88.4	95.6
1957	97.0	102.0	96.4	92.1	100.4
1947-1957	91.8	97.0	93.7	98.6	96.5

1/ Including subsidy.

2/ Operating expenses as a percent of operating revenues.

...es of Return for Pan American (LAD), Panagra, and Branif (International)
1947 - 1957

"Net Profit" represents reported net profit (after income taxes) before interest charges. For the years 1947 through 1955, the data are adjusted to reflect the accrual of mail pay and subsidy (less applicable taxes) in the years in which earned rather than reported. The data for 1956 and 1957 are as reported. For the years 1949 through 1957, net profit is adjusted to eliminate capital gains and losses less applicable taxes at the rate of 25% for Pan American and Braniff and 22% for Panagra.

Average Total Investment represents the average of quarterly balances of net worth, long-term debt and notes payable. Where necessary to obtain divisional figures, total system investment has been prorated on the basis of divisional operating expenses.

Including subsidy.

In the Re-opened Transatlantic Final Mail Rate Case, Docket No. [illegible] et al., decided March 23, 1956, the Civil Aeronautics Board found a 10% return on invested capital to be a fair and reasonable rate of return with respect to the international operations of Pan American.

...il Aeronautics Board Form 41 Reports.
...il Aeronautics Board, Quarterly Report of Air Carriers ...ancial Statistics, December, 1957.

Pan American World Airways Inc.,
Statistical Exhibit 110

Aliens as a Percent of Total Air Travelers
Between the U. S. and South America 1/
Fiscal Years 1947-1958

Fiscal Year	Total Arrivals	Aliens Arriving	% Aliens
1947	32,386	17,946	55.2
1948	58,739	28,956	49.4
1949	60,175	27,994	46.5
1950	61,912	29,450	47.6
1951	75,316	40,000	53.1
1952	94,788	51,299	54.1
1953	102,381	55,625	54.3
1954	103,714	54,241	52.5
1955	114,016	59,262	52.0
1956	124,717	66,757	53.6
1957	142,337	77,913	54.7
1958	166,445	93,648	56.2

Fiscal Year	Total Arrivals and Departures	Aliens Arriving and Departing	% Aliens
1952	178,238	94,785	52.6
1953	186,019	95,974	51.6
1954	184,529	95,864	50.6
1955	210,922	106,843	50.6
1956	235,421	119,904	50.9
1957	272,059	136,292	50.1
1958	312,859	163,525	52.3

1/ Including Canal Zone and Panama.

Source: Immigration and Naturalization Service, Annual Report, 1947-1958.

[fol. 4634]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 111

Percentage Of Aliens Traveling By Air Between The U. S. And South America* Using the Services Of Foreign Flag Carriers
Fiscal Years 1946 - 1958

	Alien Travelers		Percent Using Foreign Flag Air Carriers
	Total	Using Foreign Flag Air Carriers	
Arriving in U. S.			
Fiscal Year 1946	5,921	1,603	26.9
Fiscal Year 1947	17,946	3,552	19.8
Fiscal Year 1948	26,956	7,390	25.3
Fiscal Year 1949	27,994	7,174	25.6
Fiscal Year 1950	29,450	8,415	28.6
Fiscal Year 1951	40,000	11,896	29.7
Fiscal Year 1952	51,249	16,100	31.4
Fiscal Year 1953	55,625	20,845	37.5
Fiscal Year 1954	54,241	21,839	40.3
Fiscal Year 1955	64,267	22,940	35.7
Fiscal Year 1956	66,757	29,862	44.7
Fiscal Year 1957	77,913	36,426	46.7
Fiscal Year 1958	93,648	44,433	47.4
Arriving and Departing U. S.			
Fiscal Year 1952	94,785	31,755	33.5
Fiscal Year 1953	95,974	36,304	37.8
Fiscal Year 1954	95,854	38,710	40.4
Fiscal Year 1955	106,843	41,872	39.2
Fiscal Year 1956	119,904	53,446	44.6
Fiscal Year 1957	136,292	64,474	47.3
Fiscal Year 1958	163,525	83,808	51.2

* Including Canal Zone.

Source: Immigration and Naturalization Service, Annual Report, 1947 - 1958.

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 112

Percentage Of U. S. Citizens Travelling By Air Between The U. S. And South America* Using The Services Of Foreign Flag Carriers
Fiscal Years 1947 - 1958

	Total	Using Foreign Flag Carriers	Percent Using Foreign Flag Carriers
rriving in U. S.			
1947	14,440	962	6.2
1948	29,783	3,907	13.0
1949	32,181	4,028	12.5
1950	32,462	3,697	11.4
1951	35,316	4,445	12.4
1952	43,483	5,962	13.8
1953	46,756	8,057	17.3
1954	48,873	8,206	16.7
1955	54,754	9,473	17.3
1956	57,960	12,994	22.4
1957	64,424	13,750	21.4
1958	72,797	17,768	24.5
rriving and Departing U. S.			
1952	84,453	11,662	13.8
1953	90,045	15,320	17.0
1954	93,475	17,137	18.2
1955	104,079	18,861	18.1
1956	115,517	26,235	22.7
1957	135,767	28,966	21.3
1958	149,334	35,780	24.0

ncluding the Canal Zone.

ource. Immigration and Naturalization Service, Annual Report, 1947-1958.

[fol. 4637]

Pan American World Airways Inc., Statistical Exhibit 114

Summary Of Increases In Subsidy Requirements Under Alternative Three Carrier Route Patterns Between The U. S. And South America

1952

	Pan American	Panagra	Total
Assumption No. 1			
Added Operating Loss	$2,340,000 (PS-124)	$ 877,000 (PS-126)	$3,217,000
Loss of Interchange Return	--	300,000 (PS-126)	300,000
Added Requirement for Return	357,000 (PS-129)	187,000 (PS-129)	544,000
Total	$2,697,000	$1,364,000	$4,061,000
Assumption No. 2			
Added Operating Loss	$2,805,000 (PS-124)	$1,808,000 (PS-126)	$4,613,000
Loss of Interchange Return	--	300,000 (PS-126)	300,000
Added Requirement for Return	1,275,000 (PS-129)	(5,000)(PS-129)	1,270,000
Total	$4,080,000	$2,103,000	$6,183,000

1957

	Pan American	Panagra	Total
Assumption No. 1			
Added Operating Loss	$3,458,000 (PS-125)	$ 319,000 (PS-127)	$3,777,000
Loss of Interchange Return	--	400,000 (PS-127)	400,000
Added Requirement for Return	275,000 (PS-129)	256,000 (PS-129)	531,000
Total	$3,733,000	$ 975,000	$4,708,000
Assumption No. 2			
Added Operating Loss	$2,741,000 (PS-125)	$1,920,000 (PS-127)	$4,661,000
Loss of Interchange Return	--	400,000 (PS-127)	400,000
Added Requirement for Return	2,023,000 (PS-129)	(107,000)(PS-127)	1,916,000
Total	$4,764,000	$2,213,000	$6,977,000

[fol. 4638]

Pan American World Airways Inc., Statistical Exhibit 115

Description Of Route Structure And Schedules Assumed For Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 And 1957

I. Route Pattern Assumptions

Assumption 1

A. Extension of Panagra from Balboa to Miami.

B. No addition of through plane services in either 1952 or 1957. Continuation of interchange service between points north of Miami (New York and Washington) and points in South America during 1957.

C. No extension of existing Pan American routes and no new interchange arrangements.

D. No change in Braniff's operating authority.

Assumption 2

A. Extension of Panagra from Balboa to Miami.

B. Extension of Pan American to the West Coast of South America (in accordance with its application in CAB Docket No. 8597 (Bogota, Quito, Guayaquil, Lima, La Paz, Santiago, and Buenos Aires.)

C. No through plane service to points north of Miami in 1952. Interchange services between points north of Miami and points served by Pan American and Panagra in South America to the extent such services were provided in 1957. Both Pan American and Panagra assumed to participate in such interchange.

D. No change in Braniff's operating authority.

II. Scheduling Assumptions.

Assumption 1.

1952

A. Panagra to offer the schedules operated under the Pan American - Panagra interchange agreement.

B. Pan American to operate a daily service between Miami and Balboa in each direction.

C. No change in Braniff's service.

1957

Same as above.

Description Of Route Structure And Schedules
Assumed For Alternative Three Carrier Route
Patterns Between The U. S. And South America
1952 And 1957

II. Scheduling Assumptions (Cont'd.)

Assumption 2.

1952

A. No change in Braniff's service.

B. Pan American and Panagra to divide the through services between the U. S. and South America which were provided under the interchange agreement equally and each to provide, as a minimum, the number of flights provided by Braniff to and from and within South America, except in those markets where Panagra actually provided less frequency than Braniff.

1957

Same as above.

III. Assumed Scheduling Plan under Assumption 1.

1952

	No. of Weekly One-Way Flights				
	Actual		Assumed		
	PA	BN	PA	PG	BN
Between Miami and Balboa	10	7	7	10	7

1957

	No. of Weekly One-Way Flights				
	Actual		Assumed		
	PA	BN	PA	PG	BN
Between Miami and Balboa	14	8	7	14	8

Pages

Description Of Route Struct
Assumed For Alternative Th
Patterns Between The U S
1452 And

IV. Assumed Scheduling Plan under Ass

1452

Actual Paraguá Schedule (Weekly O

1 - BLB-LIM-BUE
2 - BLB-LIM-SCL-BUE
4 - BLB-GYE-LIM-SCL-BUE
1 - BLB-LIM-ANF-SCL-BUE
1 - BLB-GYE-LIM-ANF-SCL-
1 - BLB-GYE-LIM-LPB-BUE

Assumed Schedule for both Pan Am

1 - BLB-LIM-BUE
1 - BLB-LIM-SCL-BUE
1 - BLB-GYE-LIM-LPB-SCL
2 - BLB-GYE-LIM-SCL-BUE
1 - BLB-GYE-LIM
1 - BLB-LIM

Comparison of Schedule Frequen

BLB-GYE	4
BLB-LIM	10
BLB-LPB	1
BLB-SCL	5
BLB-BUE	3
GYE-LIM	7
GYE-LPB	1
GYE-SCL	2
GYE-BUE	1
LIM-LPB	1
LIM-SCL	5
LIM-BUE	4
SCL-BUE	2
LPB-SCL	1
LPB-BUE	1

1452

Actual Paraguá Schedule (Weekly O

1 - BLB-LIM-BUE
1 - BLB-GYE-LIM-SCL-BUE
4 - BLB-LIM-SCL-BUE
4 - BLB-UIO-GYE-LIM
1 - BLB-GYE-LIM-LPB-BUE
1 - BLB-GYE-LIM-LPB-SCL

Description Of Route Structure And Schedules
Assumed For Alternative Three Carrier Route
Patterns Between The U. S. And South America
1952 And 1957

1957 (Cont'd.)

Assumed Schedule for Pan American

2 - BLB-BOG
2 - BLB-UIO-GYE-LIM
1 - BLB-LIM-BUE
2 - BLB-GYE-LIM-LPB-SCL-BUE
2 - BLB-LIM-SCL-BUE

Assumed Schedule for Panagra

2 - BLB-UIO-GYE-LIM-SCL
1 - BLB-GYE-LIM-BUE
1 - BLB-GYE-LIM-LPB-SCL-BUE
2 - BLB-LIM-SCL-BUE
1 - BLB-GYE-LIM-LPB-BUE

Comparison of Schedule Frequency South of Balboa

	Actual		Assumed		
	PG	BN	PA	PG	BN
BLB-BOG	-	2	2	-	2
BLB-UIO	4	-	2	2	-
BLB-GYE	9	2	4	5	2
BLB-LIM	14	5	7	7	5
BLB-LPB	2	2	2	2	2
BLB-SCL	8	-	4	4	-
BLB-BUE	10	2	5	5	2
UIO-GYE	4	-	2	2	-
UIO-LIM	4	-	2	2	-
UIO-LPB	-	-	-	-	-
UIO-SCL	-	-	-	-	-
UIO-BUE	-	-	-	-	-
GYE-LIM	9	2	4	5	2
GYE-LPB	2	2	2	2	2
GYE-SCL	4	-	2	2	-
GYE-BUE	5	2	2	3	2
LIM-LPB	2	2	2	2	2
LIM-SCL	8	-	4	4	-
LIM-BUE	10	2	5	5	2
LPB-SCL	1	-	2	1	-
LPB-BUE	2	2	2	2	2
SCL-BUE	8	-	4	4	-

Note: All flights originate or terminate in the U.S. Only service to competitive points is shown.

Source: 1952 and 1957 schedule data from Official Airline Guide, August 1952 and 1957.

1/ Because of scheduling considerations, it was necessary to add two more frequencies across this segment than indicated by general scheduling assumptions.

[fol. 4643]

Pan American World Airways Inc., Statistical Exhibit 116

Estimated Changes In Passenger Traffic Distribution Under Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 and 1957

I. Route Assumption 1 - (Panagra Extension to Miami) - 1952

Segment	Actual Revenue Passenger Miles (000) Braniff	Panagra	Pan American	Estimated Increase or (Decrease) in RPM s (000) Panagra	Pan American
ANF - LGA	-	683	356	336	(336)
ANF - DCA	-	14	8	6	(6)
ANF - MIA	-	412	202	202	(202)
ASU - LGA	76	-	-	-	-
ASU - DCA	25	-	-	-	-
ASU - MIA	430	-	-	-	-
BLB - LGA	434	-	5,912	3,478	(3,478)
BLB - DCA	62	-	1,665	979	(979)
BLB - MIA	2,693	-	11,354	6,679	(6,679)
BUE - LGA	358	9,984	3,400	3,400	(3,400)
BUE - DCA	-	719	245	245	(245)
BUE - MIA	1,432	5,752	1,959	1,959	(1,959)
CLO - LGA	-	318	851	851	(851)
CLO - DCA	-	4	10	10	(10)
CLO - MIA	-	136	366	366	(366)
GYE - LGA	116	892	1,336	1,336	(1,336)
GYE - DCA	93	98	146	146	(146)
GYE - MIA	968	948	1,420	1,420	(1,420)
LPB - LGA	138	975	532	532	(532)
LPB - DCA	138	410	224	224	(224)
LPB - MIA	247	898	490	490	(490)
LIM - LGA	696	3,688	2,917	2,917	(2,917)
LIM - DCA	190	522	412	412	(412)
LIM - MIA	4,324	5,730	4,533	4,533	(4,533)
UIO - LGA	-	282	454	454	(454)
UIO - DCA	-	140	210	210	(210)
UIO - MIA	-	182	294	294	(294)
SCL - LGA	-	3,430	1,329	1,329	(1,329)
SCL - DCA	-	1,228	476	476	(476)
SCL - MIA	-	3,646	1,413	1,413	(1,413)
TYL - LGA	-	42	51	51	(51)
TYL - DCA	-	1	1	1	(1)
TYL - MIA	-	262	316	316	(316)
[illegible]					(5,95[illegible])

[fol. 4644]

7 Pages

Estimated Changes In Passenger Traffic Distr
Three Carrier Route Patterns Between The
1952 and 1957 a

II. Route Assumption 1 - (Panagra Exten

Segment	Actual Revenue Passenger Miles (000) Braniff	Panagra	Pan Am
ANF - LGA	-	1,000	
ANF - DCA	-	28	
ANF - MIA	-	470	
BLB - LGA	1,324	-	
BLB - DCA	764	-	
BLB - MIA	5,023	-	
BUE - LGA	744	13,384	
BUE - DCA	82	2,742	
BUE - MIA	1,928	11,800	
CLO - LGA	-	944	
CLO - DCA	-	24	
CLO - MIA	-	496	
GYE - LGA	444	944	
GYE - DCA	1,152	40	
GYE - MIA	860	470	
LPB - LGA	476	1,520	
LPB - DCA	208	166	
LPB - MIA	714	1,028	
LIM - LGA	2,556	7,782	
LIM - DCA	760	1,184	
LIM - MIA	3,674	6,358	
UIO - LGA	-	842	
UIO - DCA	-	164	
UIO - MIA	-	768	
SCL - LGA	-	6,752	
SCL - DCA	-	1,156	
SCL - MIA	-	4,290	
TYL - LGA	-	112	
TYL - DCA	-	1	
TYL - MIA	-	520	
All Segments			

Estimated Changes In Passenger Traffic Distribution Under Alternative Three Carrier Route Patterns Between The U.S. And South America And Between Cities On The Panagra System

III. Route Assumption 2 - (Panagra extension to Miami; Pan American extended to serve Bogota, Quito, Guayaquil, Lima, La Paz, Santiago and Buenos Aires; establishment of new interchange to New York and Washington) - 1952

Segment	Actual Revenue Passenger Miles (000): Branniff	Panagra	Pan American	Estimated Increase or (Decrease) in RPM's (000): Panagra	Pan American
BLB-BUE	1,027	9,184		(4,591)	4,591
BLB-GYE	108	1,018		(509)	509
BLB-LPB	128	860		(430)	430
BLB-LIM	874	5,550		(2,708)	2,708
BLB-SCL		5,598		(2,699)	2,699
GYE-BUE	260	1,728		(864)	864
GYE-LPB	8	8		(4)	4
GYE-LIM	253	1,511		(758)	758
GYE-SCL		608		(304)	304
LPB-BUE	780	906		(453)	453
SCL-BUE		12,950		(6,479)	(6,479)
LIM-BUE	1,521	5,990		(2,995)	2,995
LIM-LPB	108	1,428		(714)	714
LIM-SCL		9,417		(4,708)	4,708
BLB-LGA	4,434		5,912	(2,956)	(2,956)
BLB-DCA	1,305		1,965	(652)	(652)
BLB-MIA	2,093		11,354	(5,677)	(5,677)
BUE-LGA	558	9,984	5,406	(2,592)	2,592
BUE-DCA		774	249	(237)	237
BUE-MIA	1,432	5,252	1,959	(1,902)	1,902
GYE-LGA	111	852	1,554	222	(222)
GYE-DCA	49	98	140	24	(24)
GYE-MIA	968	948	1,420	236	(236)
LPB-LGA	198	978	532	(222)	222
LPB-DCA	198	410	224	(93)	93
LPB-MIA	243	808	490	(204)	204
LIM-LGA	690	5,088	2,917	(881)	881
LIM-DCA	190	22	412	(55)	55
LIM-MIA	4,124	8,730	4,543	(548)	548
SCL-LGA		5,430	1,328	(951)	951
SCL-DCA		228	476	(176)	176

[fol. 4647]

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Estimated Changes In Passenger Traffic Distribution Under Alternative Three Carrier Route Patterns Between The U.S. And South America And Between Cities On The Panagra System

IV Route Assumption 2 - (Panagra extension to Miami Pan American extended to serve Bogota, Quito, Guayaquil, Lima, La Paz, Santiago and Buenos Aires - Establishment of new Interchange to New York and Washington) - 1957

Segment	Actual Revenue Passenger Miles (000) Braniff	Panagra	Pan American	Estimated Increase or (Decrease) in RPM s (000) Braniff	Panagra	Pan American
BLB - BOG	867			(434)		434
BLB - BUE	1,233	10,477			(5,238)	5,238
BLB - GYE	251	1,351			(612)	612
BLB - LPB	321	1,065			(537)	537
BLB - LIM	1,698	10,153			(5,076)	5,076
BLB - SCL		6,788			(3,394)	3,394
GYE - BUE	136	720			(288)	288
GYE - LPB	82	58			(29)	29
GYE - LIM	412	2,457			(1,081)	1,081
GYE - SCL		338			(169)	169
LPB - BUE	2,062	1,836			(918)	918
LPB - SCL		515			(344)	344
LIM - BUE	936	8,108			(4,054)	4,054
LIM - LPB	886	1,823			(912)	912
LIM - SCL		7,110			(3,555)	3,555
UIO - GYE		2,743			(1,372)	1,372
UIO - LIM		958			(479)	479
SCL - BUE		17,908			(8,954)	8,954
BLB - LGA	1,829		10,788		4,720	(4,720)
BLB - DCA	762		1,569		(683)	(886)
BLB - MIA	5,023		18,763		(5,204)	(8,204)
BOG - LGA	1,802			(901)		901
BOG - DCA	744			(372)		372
BOG - MIA	2,214			(1,107)		1,107
BUE - LGA	744	13,354	4,547		(3,404)	4,404
BUE - DCA	82	2,732	330		(931)	901
BUE - MIA	1,928	10,807	3,689		(5,563)	3,563
GYE - LGA	441	948	1,420		378	(378)
GYE - DCA	152	46	70		19	(19)
GYE - MIA	560	976	1,462		384	(384)

[fol. 4648]

PS-11e
Page [illegible] of [illegible] Pages

Estimated Changes In Passenger Traffic Distribution Under Alternative Three Carrier Route Patterns Between The U.S. And South America and Between Cities On The Panagra System

I. Route Assumptions: (Panagra extension to Miami, Pan American extended to serve Bogota, Quito, Guayaquil, Lima, La Paz, Santiago and Buenos Aires, establishment of new interchange to New York and Washington)

Segment	Actual Revenue Passenger Miles (000) Braniff	Panagra	Pan American	Estimated Increase or (Decrease) in RPM's (000) Braniff	Panagra	Pan American
LPB - LGA	526	1,52[illegible]	85[illegible]		(348)	34[illegible]
LPB - DCA	27[illegible]	[illegible]	[illegible]		(38)	38
LPB - MIA	714	1,07[illegible]	58[illegible]		(245)	245
LIM - LGA	2,550	7,78[illegible]	2,[illegible]58		(813)	813
LIM - DCA	760	1,08[illegible]	85[illegible]		(314)	134
LIM - MIA	[illegible]074	[illegible]	[illegible]33		(704)	704
SCL - LGA		[illegible]	[illegible]		[illegible]	[illegible]
SCL - DCA		[illegible]	44[illegible]		(553)	35[illegible]
SCL - MIA		[illegible]	[illegible]		[illegible]	[illegible]
GLO - LGA		94[illegible]	[illegible]		[illegible]	[illegible]
GLO - DCA		24	[illegible]		[illegible]	[illegible]
GLO - MIA		10[illegible]	[illegible]		[illegible]	[illegible]
TYL - LGA		[illegible]	[illegible]		[illegible]	[illegible]
TYL - DCA		[illegible]	[illegible]		[illegible]	[illegible]
TYL - MIA		[illegible]	[illegible]		[illegible]	[illegible]
Total				[illegible]	[illegible]	[illegible]

(1) Local traffic over the Miami-Balboa sector is estimated to divide 58.8% for Panagra and 41.2% for Pan American after excluding traffic in which Braniff has participated. It is further estimated that Panagra would carry all foreign traffic moving between Miami and points in South America which Panagra serves. The division of local traffic is based on the relative frequency of service assumed (14 round trip flights per week by Panagra and 7 by Pan American).

(2) Local traffic over the Miami-Balboa sector is estimated to divide 58.8% for Panagra and 41.2% for Pan American, based on the relative frequency of service assumed (14 one-way flights per week by Panagra and 7 by Pan American). In dividing local traffic between Panagra and Pan American, Braniff's traffic has been excluded. It is estimated that Panagra would carry all foreign traffic to points served by it.

Intra-South American traffic in Route Assumption 2 is assumed to divide in the same ratio as the frequency of service offered by the competing carriers. Braniff's service and traffic-participation is estimated to remain unchanged. Traffic to the United States from South American points is likewise estimated to divide in the same ratio as frequency of service.

[fol. 4650]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 117

Gains Or (Losses) In Passenger Revenues Under
Alternative Three Carrier Route Patterns Between The
U. S. And South America
1952 and 1957

	Gain Or (Loss) In RPM's (000's)	Estimated Yield Per RPM (Cents)	Gain Or (Loss) In Passenger Revenue (000's)
I Route Assumption 1 - 1952			
Pan American	(15,065)	4.1	$ (617)
Panagra	15,065	4.1	617
Braniff		4.1	
II Route Assumption 1 - 1957			
Pan American	(62,029)	4.1	(2,543)
Panagra	62,029	4.1	2,543
Braniff		4.1	
III Route Assumption 2 - 1952			
Pan American	25,437	4.1	1,043
Panagra	(25,437)	4.1	(1,043)
Braniff		4.1	
IV Route Assumption 2 - 1957			
Pan American	7,190	4.1	295
Panagra	(54,267)	4.1	(2,225)
Braniff	(2,814)	4.1	(115)

1 Weighted average of one-way first class and tourist fares discounted by 15% to reflect round trip discounts, half fares and fare prorates. Discounted one-way fares were weighted in accordance number of first class and tourist flights provided in each year.

2 Yield per revenue passenger mile experienced by Braniff in each year.

Source: PS-116
Official Airline Guide, August 1952 and 1957 Form 41

fol. 4651]

Pan American World Airways Inc.,
Statistical Exhibit 118

Page 1 of 1 Page

Increase (Decrease) In Non-Passenger Revenue (Excluding Mail Subsidy) Under Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 and 1957

	Gain (Loss) in Passenger Revenue (000's)	Estimated Ratio of Non-Passenger Revenue (Percent)	Gain (Loss) in Non-Passenger Revenue (000's)
I Route Assignments - 1952			
Pan American	$12,005	10.1 [1]	$1,214
Panagra	2,705	10.1 [1]	274
Braniff	-	10.1 [1]	-
II Route Assignments - 1952			
Pan American	(4,346)	10.1 [1]	(439)
Panagra	4,346	10.1 [1]	439
Braniff	-	10.1 [1]	-
III Route Assignments - 1952			
Pan American	5,410	10.1 [1]	547
Panagra	(5,410)	10.1 [1]	(547)
Braniff	-	10.1 [1]	-
IV Route Assignments - 1957			
Pan American	2,778	15.2 [2]	422
Panagra	(2,568)	15.2 [2]	(390)
Braniff	(210)	15.2 [2]	(32)

1 Based on Braniff's experienced ratio in 1952, after deducting the amount of $1,234,000 of mail subsidy included in U.S. mail pay. Non-passenger revenues from scheduled transportation totaled $477,000 as compared passenger revenues of $6,058,000.

2 Based on Braniff's experienced ratio in 1957. Non-passenger revenues for the year amounted to $1,149,000 as compared with passenger revenues of $6,915,000.

Source: PS-117
Form 41 reports to CAB.

Computation Of Increase Or D
Scheduled Under Alternati
Patterns Between The U
1952 And

1 Route Assumptions 1 and 2 - 1952

Segment	Mileage	Actual No. of Weekly Flights 1/		Annual No. of M Scheduled (00	
		Panagra	Pan American	Panagra	Pan Am
BLB-GYE	778	12	-	485	-
BLB-LIM	1,474	8	-	615	-
GYE-LIM	716	11	-	410	-
LIM-ANF	899	4	-	187	-
LIM-SCL	1,535	12	-	958	-
LIM-LPB	665	2	-	69	-
LIM-BUE	1,950	2	-	203	-
ANF-SCL	696	4	-	145	-
LPB-BUE	1,397	2	-	145	-
SCL-BUE	699	16	-	581	-
LPB-SCL	1,209	-	-	-	-
GYE-TYL	192	1	-	10	-
TYL-LIM	596	1	-	31	-
MIA-BLB 2/	1,166	-	40	-	1,213
MIA-BLB 3/	1,166	-	20	-	1,213
Totals 3/				3,838	1,213

1/ Average of February and August 1952 schedules in both directions

2/ Route Assumption 1

3/ Route Assumption 2

r (Decrease) In Aircraft Miles
ative Three Carrier Route
U. S. And South America
And 1957

f Miles (000's) American	Under Assumed Schedule Plans			
	No. of Weekly Flights		Increase or (Decrease in Annual Miles Scheduled (000's)	
	Panagra	Pan American	Panagra	Pan American
	8	8	(165)	325
	6	6	(154)	459
	8	8	(112)	297
	4	-	-	-
	4	4	(659)	319
	2	2	-	69
	2	2	-	203
	4	-	-	-
	-	-	(145)	-
	8	8	(294)	294
	2	2	(126)	126
	1	-	-	-
	1	-	-	-
,213	20	14	1,213	(364)
,213	14	14	848	(364)
,213			(530)	1,725

Computation Of Increase Or (D
Scheduled Under Alternativ
Patterns Between The U.
1952 And

II. Route Assumptions 1 and 2 - 1957

Segment	Mileage	Actual No. of Weekly Flights 1/ Panagra	Pan American	Annual No. of Mi Scheduled (000 Panagra	Pan Am
BLB-BOG	328	-	-	-	-
BLB-GYE	778	10	-	404	-
BLB-LIM	1,474	10	-	766	-
BLB-UIO	723	8	-	301	-
GYE-LIM	716	18	-	670	-
LPB-BUE	1,397	2	-	143	-
LPB-SCL	1,209	2	-	125	-
LIM-BUE	1,950	2	-	203	-
LIM-LPB	665	4	-	138	-
LIM-SCL	1,535	14	-	1,117	-
UIO-GYE	167	8	-	69	-
SCL-BUE	699	16	-	581	-
MIA-BLB 2/	1,166	-	28	-	-
MIA-BLB 3/	1,166	-	28	-	1,69
Totals				4,517	1,69

1/ Based on August 1957

2/ Route Assumption 1

3/ Route Assumption 2

r (Decrease) In Aircraft Miles
ative Three Carrier Route
U. S. And South America
And 1957

Miles (000's)		Under Assumed Schedule Plans			
		No. of Weekly Flights		Increase or (Decrease) in Annual Miles Scheduled (000's	
American		Panagra	Pan American	Panagra	Pan American
-		-	4		68
-		6	4	(242)	162
-		4	6	(306)	460
-		4	4	(150)	160
-		10	8	(372)	298
-		2		-	-
-		2	4	-	251
-		-	2	-	-
-		4	4	-	138
-		6	4	(479)	321
-		4	4	(35)	35
-		8	8	(294)	294
-		28	14	1,697	(849)
698		14	18	849	(606)
698				(1,026)	1,568

[fol. 4654]

Pan American World Airways Inc., Statistical Exhibit 120

Distribution Of Increase Or (Decrease) In Aircraft Miles By Type Of Aircraft Under Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 and 1957

	Increase or (Decrease) In A/C Miles (000's)			
	Route Assumption 1		Route Assumption 2	
	1952	1957	1952	1957
Pan American				
All A/C Types	(373)	(870)	1,766	1,607
DC-4	(124)	--	(124) 1/	
DC-6	(249)	(870)	1,890	(870) 2/
LC-7	--	--	--	2,477
Panagra				
All A/C Types	1,243	1,739	(543)	(1,052)
DC-4	124	--	(124)	--
DC-6	1,119	870	(419)	(1,690) 2/
DC-7	--	869	--	838

Note: Mileages have been converted from a scheduled basis to an actual basis by applying a factor of 102.5% representing the relationship between actual and scheduled miles in 1957 for Panagra.

1/ Assumes replacement of all DC-4 mileage with DC-6 mileage.

2/ Assumes replacement of all DC-6 mileage with DC-7 mileage.

Source: PS-119
Form 41 reports to CAB.
Official Airline Guide.

[fol. 4655]

Pan American World Airways Inc., Statistical Exhibit 121

Aircraft Operating Expenses Per Revenue Mile Flown
For Pan American And Panagra
1952 and 1957

	Aircraft Expense Pe. Revenue Mile (cents) DC-4	DC-6	DC-7
Pan American 1/			
1952			
5100-Flying Operations 3/	60.35	81.59 2/	--
5145-A/C Fuel	28.92	36.33	--
5200-Direct Maintenance	22.49	27.67 2/	--
1957			
5100-Flying Operations	--	75.88	82.29
5200-Maintenance 4/	--	44.26	50.91
Panagra			
1952			
5100-Flying Operations	67.03	81.59	--
5200-Direct Maintenance	25.55	27.67	--
1957			
5100-Flying Operations	--	88.14	88.83
5200-Maintenance 4/	--	54.32	69.56

1/ Revenue miles, after deduction of interchange mileage, used except for 5145-A/C Fuel where revenue miles, including interchange, used.

2/ Assumes rate equal to Panagra, since all PAA (LAD) DC-6 mileage is operated on the Miami-Balboa interchange.

3/ Before Rental charges included in Account 5144.

4/ Includes applied maintenance burden.

Source: Form 41 Reports.

Estimated Additional City Ticket Office Expens
For Panagra Had Independent Sales
Operations Been Conducted
1952 - 1957

Year	No. of Employees	Annual Wages	Size of Office (Sq. Ft.)	Annual Rent
1952				
Under Route Assumption 1				
Boston	6	$ 21,000	1,000	$ 9,000
New York	25	87,500	4,500	75,000
Los Angeles	10	35,000	1,600	13,000
San Francisco	10	35,000	1,600	13,000
Chicago	10	35,000	1,600	13,000
Miami	30	105,000	4,800	48,000
Dallas	6	21,000	1,000	9,000
Washington	10	35,000	1,600	14,400
Total	107	$374,500	17,700	$194,400
Additional Under Route Assumption 2:				
Rio de Janeiro	10	$ 20,000	1,600	$ 6,400
Montevideo	10	20,000	1,600	6,400
Caracas	10	20,000	1,600	6,400
Total	30	$ 60,000	4,800	$ 19,200
Total Under Route Assumption 2	137	$434,500	22,500	$213,600

[fol. 4656]

PAN AMERICAN WORLD AIRWAYS INC.,
STATISTICAL EXHIBIT 122

Page 1 of 2 Pages

xpense

	Other Expenses	Total Expenses
0	$ 15,000	$ 45,000
0	81,250	243,750
0	24,000	72,000
0	24,000	72,000
0	24,000	72,000
0	29,250	182,250
0	15,000	45,000
0	24,700	74,100
0	$237,200	$806,100
	$ 13,200	$ 39,600
	13,200	39,600
	13,200	39,600
	$ 39,600	$118,800
	$276,800	$924,900

Estimated Additional City Ti
For Panagra Had Inde
Operations Been C
1952 - 195

	No. of Employees	Annual Wages	Size of Office (Sq. Ft.)
Under Route Assumption 1			
Boston	6	$ 30,500	1,250
New York	30	130,000	5,500
Los Angeles	13	52,500	2,000
San Francisco	13	52,500	2,000
Chicago	13	52,500	2,000
Miami	37	157,500	6,000
Dallas	6	30,500	1,250
Washington	13	52,500	2,000
Total	135	$558,500	22,000
Additional Under Route Assumption 2			
Rio de Janeiro	13	$ 26,000	2,000
Montevideo	13	26,000	2,000
Caracas	13	26,000	2,000
Total	39	$ 78,000	6,000
Total Under Route Assumption 2	174	$636,500	28,000

Ticket Office Expense
Independent Sales
Conducted
1857

of ce [illegible]	Annual Rent	Other Expenses	Total Expenses
250	$ 11,000	$ 20,750	$ 62,250
500	75,000	102,500	307,500
000	17,500	35,000	105,000
000	17,500	35,000	105,000
000	17,500	35,000	105,000
000	54,000	105,750	317,250
250	11,000	20,750	62,250
000	17,500	35,000	105,000
000	$221,000	$389,750	$1,169,250
000	$ 8,000	$ 17,000	$ 51,000
000	8,000	17,000	51,000
000	8,000	17,000	51,000
000	$ 24,000	$ 51,000	$ 153,000
000	$245,000	$440,750	$1,322,250

[fol. 4658]

Pan American World Airways Inc., Statistical Exhibit 123

Additional Station Costs For Pan American (L&D) At New Stations To Be Added Under Route Assumption 2

	Ground Operation and Traffic & Sales Expense	Depreciation 1/ Ground Equipment	Total
1952			
Guayaquil 1/	$ 168,741	$ 6,549	
Lima 4/	345,008	16,484	
La Paz 1/	180,225	4,742	
Santiago 1/	238,373	14,379	
Total	$ 852,347	$ 32,154	$ 884,501

	Aircraft and Traffic Servicing Expense		
1957			
Guayaquil 1/	$ 256,015		
Lima 4/	203,740		
La Paz 1/	109,296		
Santiago 1/	197,757		
Bogota 2/	46,844		
Quito 4/	115,569		
Total	$ 929,221	$ 42,000 3/	$ 971,221

1/ Estimated to be comparable with Panagra's experienced costs.

2/ Estimated to equal Braniff's experienced costs at Bogota during the last two quarters of 1957 when service was provided by Braniff. Costs for the six months were doubled.

3/ Estimated to equal 1952 costs at these stations with adjustment for two additional stations at the approximate level of costs at La Paz.

4/ Estimated to be comparable with Braniff's experienced costs.

Source Form 41 reports to CAB.

[fol. 4659]

Pan American World Airways Inc., Statistical Exhibit 124

Changes In Income And Expenses Under Alternative Three Carrier Route Patterns Between The U. S. And South America Pan American (LAD) 1952

	Route Assumption 1 Increase (Decrease)	Route Assumption 2 Increase (Decrease)
Operating Revenue		
Passenger	$(2,605)	$ 1,837
Other	(419) 6/	296
Total	$(3,024)	$ 2,133
Operating Expenses		
Flying Operations	$ (599) 1/	$ 1,118 8/
Direct Maintenance	241 2/	832 9/
Depreciation A/C	309 3/	618 10/
Total Direct	(149)	$ 2,568
Indirect Maintenance	$ 159 4/	$ 944 11/
Passenger Service	(238) 5/	166 12/
Advertising	(147) 6/	104 13/
Ground Operations and Traffic	(211) 16/	1,101 14/
General & Administrative	(97) 7/	418 15/
Ground Depreciation		32 17/
Total Indirect	$ (534)	$ 2,370
Total Operating Expense	$ (683)	$ 4,938
Operating Profit (Loss)	$(2,341)	$(2,805)

1/ Decrease due to elimination of Panagra through flight charge ($966,000), plus DC-6 interchange mileage (1,119,000) x 1952 PAA experienced rate per mile for fuel (36.33¢) plus DC-4 interchange mileage (124,000) x 1952 experienced rate per mile for fuel (28.92¢), less DC-6 mileage to be flown (870,000) x 1952 PGA experienced rate per mile (81.59¢).

2/ DC-6 mileage (870,000) x 1952 PGA experienced rate of 27.67¢ per mile.

3/ Two additional DC-6's @1,200,000 cost each, depreciated 7 years to 10% residual.

4/ Increased Direct Maintenance ($241,000) x 1952 PAA-LAD ratio of Indirect Maintenance to Direct Maintenance (66%).

5/ Decreased Revenue Passenger Miles (35,065,000) x 1952 PAA-LAD experienced rate per Revenue Passenger Mile (.68¢).

6/ Decreased Passenger Revenue ($2,605,000) x 1952 PAA-LAD experienced ratio of Advertising expense for Passenger Revenue (5.68%).

7/ Decreased Other Cash Expenses ($895,000) x 1952 PAA-LAD experienced percentage General & Administration Expense of Other Cash Expense (10.8%).

8/ Increased DC-6 mileage (3,009,000) x 1952 PGA experienced rate per mile (81.59¢), less Panagra interchange flight charge ($966,000), less DC-6 interchange mileage (1,119,000) x 1952 experienced rate per revenue

[fol. 4660]

Changes In Income And Expenses Under
Alternative Three Carrier Route Patterns
Between The U. S. And South America
Pan American (LAD)
1952

mile for fuel (36.33c) less DC-4 interchange mileage (124,000) x 1952 PAA experienced rate per revenue mile for fuel (28.92c).

9/ DC-6 mileage (3,009,000) x 1952 Panagra experienced rate per revenue mile (27.67c).

10/ Four additional DC-6's @1,200,000 cost, each depreciated 7 years to 10% residual.

11/ Increased Direct Maintenance ($837,000) x 1952 PAA-LAD experienced percentage Indirect Maintenance of Direct Maintenance (86%).

12/ Increased Revenue Passenger Miles (24,367,000) x 1952 PAA-LAD experienced rate per Revenue Passenger Mile (.68c).

13/ Increased Passenger Revenue ($1,837,000) x 1952 PAA-LAD experienced percentage Advertising of Passenger Revenue (5.68%).

14/ Station expense at Guayaquil, La Paz, and Santiago as experienced in 1952 by Panagra ($507,000) plus Braniff 1952 experience at Lima ($345,000) plus increased revenue ($2,133,000) x 7.0%, 1952 PAA-LAD experienced commission as a percentage of revenue.

15/ Increased Other Cash Expenses ($3,870,000) x 1952 experienced percentage General & Administration Expense of Other Cash Expense (10.8%)

16/ Reduction in Revenues $3,024,000 x 1952 PAA-LAD experienced Commission rates or Revenues 7.0% ($211,000).

17/ Depreciation Expense at Guayaquil, La Paz and Santiago as experienced in 1952 by Panagra and at Lima as experienced by Braniff (32,154).

Source: Form 41 Reports to CAB.

[fol. 4661]

Pan American World Airways Inc., Statistical Exhibit 125

Changes In Income And Expenses Under Alternative
Three Carrier Route Patterns Between The U.S. And South America
Pan American (LAD)
1957

	Route Assumption 1 Increase (Decrease) (000)	Route Assumption 2 Increase (Decrease) (000)
Operating Revenue		
Passenger	$(4,596)	$2,775
Other	(763)	461
Total	(5,359)	3,236
Operating Expenses		
Flying Operations	(1,688) 1/	350 8/
A/C Maintenance -	443 2/	1,644 9/
Ground Equipment	--	82 11/
Passenger Service	(316) 3/	194 10/
A/C and Traffic Servicing	--	928 12/
Advertising	(244) 4/	1,471 13/
Reservations and Sales	(268) 5/	162 14/
General and Administrative	(110) 6/	256 15/
Depreciation	283 7/	890 16/
Total	(1,900)	5,977
Operating Profit (Loss)	(3,458)	(2,741)

1/ Decrease due to elimination of interchange charges ($2,405,000) less proposed DC-7 mileage of (870,000) x 1957 PAA-LAD experienced rate per Revenue Mile (82.29c).

2/ Proposed DC-7 mileage (870,000) x 1957 PAA-LAD experienced rate per Revenue Mile (50.91c).

3/ Reduction in Revenue Passenger Miles (62,029,000) x 1957 PAA-LAD experienced rate per Revenue Passenger Mile (.51c).

4/ Reduction in Passenger Revenue ($4,596,000) x 1957 PAA-LAD experienced per cent Advertising of Passenger Revenue 5.3 per cent.

5/ Reduction in Total Revenue ($5,359,000) x 1957 PAA-LAD experienced per cent Commissions of Total Revenue (5 0%)

6/ Reduction in Other Cash Expenses ($2,074,000) x 1957 PAA-LAD experienced per cent General and Administrative Expenses of Other Cash Expenses (5.3%).

7/ One additional DC-7 @ 2,200,000 each depreciated 7 years to 10 per cent residual.

8/ Proposed DC-7 mileage (3,348,000) x 1957 PAA-LAD experienced rate per Revenue Mile (82.29c) less interchange charges ($2,405,000).

9/ Proposed DC-7 mileage (3,348,000) x 1957 PAA-LAD experienced rate per Revenue Mile (50.91c).

10/ Increased Revenue Passenger Miles (37,965,000) x 1957 PAA-LAD experienced rate per Revenue Passenger Mile (.51c).

11/ Ground Equipment Maintenance and Depreciation of Panagra at GYE, LPB and SCL fourth quarter 1957 x 4 plus Braniff experience in 1957 at BOG, LIM and UIO ($124,000) less Ground Equipment Depreciation in 16 ($42,000).

12/ A/C and Traffic Servicing Expense at Guayaquil, LaPaz and Santiago in 1957 for Panagra ($563,000) plus A/C and Traffic Servicing Expense at Lima, Quito and twice Bogota in 1957 for Braniff ($365,000).

[fol. 4662]

Changes In Income And Expenses Under Alternative
Three Carrier Route Patterns Between The U.S. And South America
Pan American (LAD)
1957

13/ Increased Passenger Revenue ($2,775,000) x 1957 PAA-LAD experienced per cent Advertising of Passenger Revenue (5.3%).
14/ Increased Total Revenue ($3,236,000) x 1957 PAA-LAD experienced per cent Commissions are of Passenger Revenue (5.0 per cent).
15/ Increase in Other Cash Expenses ($4,841,000) x 1957 PAA-LAD experienced per cent General and Administrative Expenses of Other Cash Expenses (5.3%).
16/ Three DC-7's @ $2,200,000 depreciated 7 years to 10 per cent residual ($848,571) plus Ground Equipment Depreciation on Exhibit PS-123 ($42,000).

Source: Form 41 Reports to CAB.

[fol. 4663]

Pan American World Airways Inc.,
Statistical Exhibit 126

Changes In Income And Expenses Under Alternative Three Carrier Route Patterns Between The U.S. And South America
Panagra
1952

	Increase or Decrease	
	Route Assumption 1	Route Assumption 2
Operating Revenue	($000)	($000)
Passenger	$2,605	$(1,910)
Other	419	(306)
Total	$3,024	$(2,216)
Operating Expenses		
Flying Operations	1,097 1/	(425) 10/
Direct Maintenance	376 2/	(148) 11/
Depreciation A/C	281 3/	281 3/
Total Direct	1,754	(292)
Indirect Maintenance	357 4/	(14) 12/
Passenger Service	235 5/	(170) 13/
Advertising	222 6/	(163) 14/
Ground Operations and Traffic	869 7/	583 15/
General and Administrative	454 8/	(235) 8/
Ground Depreciation	10 9/	10 9/
Total Indirect	2,147	(116)
Total Operating Exp.	3,901	(408)
Operating Profit or (Loss)	(877)	(1,808)
Loss of Interchange Return	(300)	(300)

1/ Increased DC-6 mileage (1,243,000 miles) x Panagra's experienced Cost per plane mile (81.59¢) plus increased DC-4 miles (124,000) x Panagra's cost per mile (67.03¢).

2/ Increased DC-6 mileage at Panagra's cost per mile (27.67¢) plus increased DC-4 miles at 25.55¢ per mile.

3/ Amount charged to Pan American for depreciation of flight equipment used in interchange.

4/ 95% of direct maintenance, based on Panagra 1952 experience.

5/ Increased revenue passenger miles (35,065,000) at Panagra cost per RPM in 1952 (.67¢).

6/ Increased passenger revenue ($2,605,000) at Panagra 1952 ratio (8.54%).

7/ Based on Balboa experience of Panagra in 1952 ($271,000) plus added city ticket office expense ($806,000), less commissions paid to Pan American on sales ($467,000) plus agents commissions of 7% on 50% of increased revenue ($10[illegible],000) plus 7% agents commission on 50% of PAA sales ($153,000).

8/ At 14.4% of change in other cash expenses.

[fol. 4664]

PS-126
Page 2 of 2 Pages

Changes In Income And Expenses Under Alternative
Three Carrier Route Patterns Between The U. S. And South America
Panagra
1952

9/ Estimated additional expense at Miami.

10/ Decrease in DC-6 miles at Panagra's cost per mile (81.54¢) plus reduction in DC-4 mileage costs at 67.03¢ per mile.

11/ Decrease in DC-6 miles at Panagra's cost per mile (27.67¢) plus reduction in DC-4 mileage costs at 25.56¢ per mile.

12/ At 95% of direct maintenance.

13/ At .67¢ per RPM lost. (25,337,000)

14/ At experienced percentage of passenger revenue (8.54%).

15/ Based on experienced costs at Balboa ($127,000) plus added city ticket office expense of ($925,000) less commissions actually paid Pan American ($467,000) less 7% agents commission on 50% of decreased revenue ($155,000) plus 7% agents commission on 50% of Pan American's sales ($153,000).

Source: Form 41 Reports to CAB.

fol. 4665]

Pan American World Airways Inc.,
Statistical Exhibit 127

Changes in Income and Expenses Under Alternative Three-Carrier Route Patterns Between the U.S. And South America
Panagra
1957

	Route Assumption 1 Increase (Decrease) (000)	Route Assumption 2 Increase (Decrease) (000)
Operating Revenue		
Passenger	4,596	(4,596)
Other	583	(434)
Total	5,179	(4,991)
Operating Expenses		
Flying Equipment	1,598 [1]	(1,107) [10]
Traffic Servicing	1,088 [2]	(944) [11]
Ground Equipment Maintenance	192	29 [12]
Passenger Service	372 [3]	(108) [13]
Ticket and Traffic Service	734 [4]	434 [2]
Advertising	511 [5]	(726) [14]
Transportation and Taxes	388 [6]	929 [15]
General and Administrative	453 [7]	(82) [8]
Depreciation	68	(42) [16]
Total	5,676	(1,971)
Operating Profit (Loss)	(319)	(1,920)
Plus: Interchange Return	(400)	(400)

1/ Increased 30.7 miles for Panagra in 1957 (869,000) multiplied by experienced rate per mile (93.33c), plus increased 30.6 miles for Panagra in 1957 (869,000) multiplied by experienced rate per mile (88.14c).

2/ Increased 30.7 miles for Panagra in 1957 (869,000) multiplied by experienced rate per mile (68.56c), plus increased 30.6 miles for Panagra in 1957, multiplied by experienced rate per mile (74.0c). Increase 25,000 increase due to increase of Miami terminal activities.

3/ The increased revenue passenger miles for Panagra in 1957 (62,020,000) multiplied by the experienced rate (7.40c

4/ Assumes an increase in Aircraft and Traffic Servicing expense equal to Panagra's expenses in 1957 (734,000).

5/ Increased Passenger Revenue ($ 4,596,000) x 1957 and the experienced per cent Advertising of Passenger Revenue (8.94%).

6/ Assumes an increased city ticket office expense of $1,169,000, less (a) commissions ($398,000) plus 7 per cent on Cargo Commissions on 50 per cent of increased Revenue $186,000), plus 7 per cent Agents' Commission on 50 per cent of P/A sales ($109,000).

7/ Assumes that Panagra's General and Administrative Expense increases at the experienced rate with respect to all cash expenses (9.37).

8/ Increased 30.7 mileage (869,000) multiplied by Panagra's experienced rate per mile of (37.64c); plus 30.6 mileage of (870,000) multiplied by Panagra's experienced rate of (25.36c) plus additional expense adjustment of ($15,000).

Changes in Income and Expenses Under Alternative
Area Actual Route Patterns Between the [illegible] And South America
Panagra
1957

[illegible] miles for Panagra in 1957 (x,xxx,000) multiplied by
experienced rate of (xx.xx¢), minus all of Panagra's experienced
expense of ($x,xxx,000)

[illegible] mileage for Panagra in 1957 (x,xxx,000) multiplied by
experienced rate of (xx.xx¢), minus all of Panagra's experienced
expense of ($x,xxx,000)

ction in revenue passenger miles under Route Assumption 2
(87,000) multiplied by Panagra's experienced rate of (.60¢)
ease in Passenger Revenue ($2,565,000) x 19% (Panagra experienced
ent Advertising of Passenger Revenue (8.2%)
ses increased 11% ticket office expense of $1,322,000, less
commissions ($598,000) less 7 per cent Agents' commission on
ct cent of decreased Revenues ($[illegible]) plus 7 per cent Agents'
ssion on 50 per cent of PAA sales ($204,000)
ss increase of ($25,000) due to additional expense at Miami, minus
r's experienced rate depreciation of ($xxx,000), plus an increase
additional DC-7 mileage (xxx,000) multiplied by Panagra's
erated rate of (xx.xx¢)

[illegible]

[fol. 4667]

Pan American World Airways Inc.,
Statistical Exhibit 128

Increases And Decreases In Investment Requirements Under Alternative Three Carrier Route Patterns Between The U. S. And South America 1952 And 1957

		Pan American (000's)	Panagra (000's)	Total (000's)
I.	Route Assumption 1 - 1952			
	Aircraft and spare parts	$ 2,400[1]	$ --	$ 2,400
	Ground equipment[2]	--	220	220
	Net working capital[3]	(248)	903	690
	Total	2,152	1,123	3,310
II.	Route Assumption 1 - 1957			
	Aircraft and spare parts	$ 2,200[8]	$ --	$ 2,200
	Ground equipment[2]	--	257	257
	Net working capital[3]	(546)	1,283	737
	Total	1,654	1,540	3,194
III.	Route Assumption 2 - 1952			
	Aircraft and spare parts	$ 4,800[4]	$ (78)[5]	$ 4,722
	Ground equipment[2]	1,809	220	2,029
	Net working capital[3]	1,072	(175)	1,017
	Total	7,681	(33)	7,768
IV.	Route Assumption 2 - 1957			
	Aircraft and spare parts	$ 8,800[8]	$ (600)[7]	$ 8,200
	Ground equipment[2]	2,116	257	2,373
	Net working capital[3]	1,272	(303)	969
	Total	$12,188	(646)	$11,542

1/ It is estimated that two DC-6 s would be required to provide a daily round trip frequency between Miami and Balboa, at an investment of $1,200,000 each.

2/ Required investment in ground equipment estimated on the basis of the increase or decrease in ground equipment maintenance expense in 1952 (in Panagra's experienced ratio of $22.00 of ground equipment investment per $1.00 of ground depreciation expense) and in 1957 on the basis of Panagra's experienced ratio of $25.74 ground equipment investment per $1.00 ground depreciation expense.

3/ Increase or decrease in net working capital requirements based on changes in cash operating expenses, in the ratio of $1.00 increase or decrease in net working capital per $4.00 increase or decrease in cash expenses.

4/ At least four DC-6 aircraft, at $1,200,000 each including spare parts, would be required to operate 3,..99,000 annual miles.

5/ To reflect retirement of one fully depreciated DC-4 aircraft which would be excess due to a decrease of 530,000 annual scheduled miles.

6/ Increased investment in four DC-7 aircraft at $2,200,000 each, required to provide 3,348,000 annual miles.

7/ To reflect retirement of one DC-6B aircraft, at an approximate net book value of $500,000, plus spares valued at an additional 20%. This equipment would be excess due to a decrease of 1,026,000 scheduled miles.

8/ Increased investment in one DC-7 aircraft, at $2,200,000, to provide a daily round-trip frequency between Miami and Balboa.

[fol. 4668]

Pan American World Airways Inc.,
Statistical Exhibit 129

Increases Or (Decreases) In Rate Of Return Requirements
Under Alternative Three Carrier Route Patterns Between
The U. S. And South America
1952 And 1957

	Route Assumption 1		Route Assumption 2	
	Increase or (Decrease) in Investment (000's)	Increase or (Decrease) in Return Requirements 1/ (000's)	Increase or (Decrease) in Investment (000's)	Increase or (Decrease) in Return Requirements 1/ (000's)
1952				
Pan American	$2,152	$357	$7,681	$1,275
Panagra	1,123	187	(33)	*(5)
Total	3,275	544	7,648	1,270
1957				
Pan American	$1,654	$275	$12,188	$2,023
Panagra	1,540	256	(646)	(107)
Total	3,194	531	11,542	1,916

1/ Return requirement estimated on the basis of a 9% return after taxes and capital structure comprised of 40% debt on which the interest is 5%. The before tax rate is 16.6%.

Source: P

MICRO CARD
TRADE MARK ®

21

12192

MATTHEW BENDER & COMPANY

13-63

microcard

[Vol. 4669]

Pan American World Airways Inc.,
Statistical Exhibit 130

COMPARISON OF PS-114 THROUGH 129 AND GX-1139
ESTIMATED FINANCIAL RESULTS OF PANAGRA
EXTENSION TO MIAMI
1957

	1957 Estimates		
	PS-114 Through 129 (000)	GX-1139 (000)	Amount Difference (000)
rating Revenues			
assenger	$ 4,596	$ 4,482	$ 114
ther	763	1,014	(251)
Total	5,359	5,456	(97)
rating Expenses			
irect Expenses			
Flying Operations	1,539	1,165	374
Maintenance*	1,103	829	274
Depreciation	548	538	10
Total	3,190	2,532	658
ndirect Expenses			
Passenger Service	372	355	17
Aircraft and Traffic Servicing	284	458	(174)
Reservations and Sales	968	650	318
Advertising	411	250	161
General and Administrative	453	149	304
Total	2,488	1,862	626
Total Operating Expenses	5,678	4,394	1,284
rating Profit or (Loss)	(319)	1,062	(1381)
s of Interchange Return	(400)	(396)	(4)
urn on Additional Investment Required	(276)	-	
rease in Subsidy Requirement	995	-	

estimates in GX-1139 are restated, insofar as possible, in the CAB account forms in effect since January 1, 1957.

* Including indirect maintenance

rce: PS-114 through 129 and GX-1139

COMPARISON OF PS-114 THROUGH 129 AND GX-1139 WITH ACTUAL
PANAGRA SYSTEM EXPERIENCE
1957

	Panagra System Actual (000)	Estimates Assuming Extension to Miami — Amount (000) PS-114 Through 129	GX-1139	Per Cent Increase PS-114 Through 129	GX-1139
Operating Revenues					
Passenger	$14,965	$4,546	$4,442	31%	30%
Other	5,816	763	1,014	13	17
Total	$20,511	$5,359	$5,456	26%	27%
Operating Expenses					
Direct Expenses					
Flying Operations	4,962	1,539	1,165	31	23
Maintenance*	3,701	1,103	829	30	22
Depreciation	1,757	546	536	31	31
Total	10,420	3,190	2,532	31	24
Indirect Expenses					
Passenger Service	1,010	372	355	37	35
Aircraft and Traffic Servicing Reservations and Sales	5,125	1,252	1,108	24	22
Advertising	1,314	411	250	31	19
General and Administrative	1,554	453	149	29	10
Total	9,003	2,488	1,862	27	21
Total Operating Expenses	19,443	5,678	4,394	29	23
Revenue Aircraft Miles	5,456	1,739	1,667	32	31
Revenue Passenger Miles	168,641	62,029	61,062	37	36

* Including indirect maintenance

Note: Estimates in GX-1139 are restated, insofar as possible, in the CAB account forms in effect since January 1, 1957

Source: Form 41 Reports to CAB
PS-114 through 129 and GX-1139

[fol. 4671]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff.

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

DOCUMENTS

WRG 1 thru WRG 33

[fol. 4672]

W. R. GRACE AND COMPANY EXHIBIT 1

IMMEDIATE RELEASE
MARCH 2, 1929

INFORMATION SERVICE
POST OFFICE DEPARTMENT

today

Postmaster General New [A] awarded to the Pan-American-Grace Airways, of New York City, the contract for carrying the air mail between Cristobal, Canal Zone, and Santiago, Chile, which route, when put into operation, will be the longest one in the world.

In awarding the contract, Postmaster General New made the following statement:

[Handwritten initials in first paragraph—PAG.]

"It is directed that the proposal of the Pan American Grace Airways, Inc., of New York, N. Y., submitted in response to the advertisement of January 31, 1929, for air mail service on the route between Cristobal, Canal Zone, and Santiago, Chile, for service as stated in the advertisement be accepted at the rate of $1.80 per mile and $.80 per pound, as stated in their proposal.

"In making this award the matter of the financial ability of the leading bidders or the integrity of the competing companies is not considered. That may be conceded. The award of contract is based on other but very material considerations.

"This is the most important air mail contract that has yet been awarded. Its importance goes not alone to the financial ability of the bidders but more directly and to a far greater degree to their proven and recognized capacity for performing the service contemplated.

"The Pan-American Company has filed evidence of extensive preparation for the operation of an air mail route through the countries with which arrangements are necessary. It has had this particular service in view for the last two years and has for that length of time been conducting negotiations and perfecting arrangements for the [fol. 4673] carrying on of the service if in the ruhness of time it should be awarded the contract for it. It has the required franchises under which to operate in the countries to be served and over which the line passes. It is indeed operating through subsidiary companies already in existence over a considerable portion of the route under consideration. In addition to this it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly established service by sea along the whole line of the proposed air mail route.

"The low bidder does not have these facilities. It has not the advantage of a functioning organization and of an operating personnel already in the field. According to the statement of its president, which is a part of the file

scribed to this company's stock but it is admitted by its president that these subscriptions are dependent upon the award of contract to the company. It is thus plainly apparent that it has not the important advantage of possessing a fixed and functioning organization equipped to enter upon the work. I am convinced that under the most favorable circumstances the low bidder could not possibly place itself in position to perform this service without the lapse of much time.

"In awarding the contract to the Pan-American Company I am also greatly influenced by information obtained direct from the United States Ambassador to Cuba, Honorable Noble B. Judah. The Ambassador has informed me that the president of the company appearing as low bidder has figured in one or more projected aeronautical enterprises in Cuba, where his experiences have been unfortu- [fol. 4674] nate, resulting in complete failure. On the other hand, the Ambassador states that the Pan-American Company is now operating lines to and through Cuba in a conspicuously successful manner.

"I would repeat that the contract in question is for a route most difficult to serve but at the same time of very great and far-reaching importance not only to the public but to the whole future of transportation by air. Failure would be a serious blow to the prestige of American aeronautical enterprise.

"Because of the facts herein enumerated, I am firm in the opinion that the best interests of the service, the Government, and the public to be served require that the award be made to the company best equipped to perform the service and I therefore make the award to the Pan-American-Grace Airways, Inc., of New York."

[fol. 4675]

W. R. GRACE AND COMPANY EXHIBIT 2

FOREIGN AIR MAIL CONTRACT

Route No. 9

Cristobal, CANAL ZONE to Santiago, CHILE

Ten Year Period

Beginning April 1, 1929

[fol. 4676]

CONTRACT FOR FOREIGN MAIL SERVICE

Route No. F. A. M. 9

This contract, made this 21 day of March, 1929, by and between the United States of America (by the Postmaster General) and the Pan American Grace Airways, Inc., a corporation organized and existing under the laws of the State of Delaware, Contractor:

WITNESSETH, That whereas the said Pan American Grace Airways, Inc., has been accepted as contractor on route No. F. A. M. 9 in conformity with the advertisement inviting proposals for the service specified herein, issued by the Postmaster General under date of January 31, 1929:

NOW THEREFORE, The said contractor undertakes, covenants and agrees with the United States of America:

1. To carry mails for the United States of the specified load of not exceeding 800 pounds a trip each way and any excess mails required to be carried in safe and suitable aircraft from Cristobal, Canal Zone, by Buenaventura and Tumaco, Colombia, Esmeraldas and Guayaquil, Ecuador, Talara, Truxillo, Lima, Lomas and Mollendo, Peru, Arica, Iquique, Antofagasta, Caldera and Coquimbo to Santiago, Chile, and return, three times a week, by a schedule satisfactory to the Postmaster General, and to perform the services and undertakings in connection therewith as specified in this contract, for and during the term of ten (10) years beginning April 1, 1929. (The Contractor may be permitted

to omit service south of Mollendo, Peru, for a reasonable time at the discretion of the Postmaster General, pending completion of operating arrangements.)

2. To receive and deliver the mails at each post office on the route, unless other provision is made by the Department. The contractor also undertakes, covenants and agrees with the United States and binds itself to be answerable in damages to the United States for the proper care and [fol. 4677] transportation of the mails, and to be accountable for any loss or damage resulting to any such mail or any part thereof by reason of the failure to exercise due care on the part of any of contractor's officers, agents or employees in the custody, handling or transportation thereof.

For the service herein specified when performed in accordance with the provisions of this contract and evidence thereof shall have been filed with the Postmaster General, the said contractor is to be paid by the United States at the rate of $1.80 per mile each way for the specified load of not exceeding 800 pounds each way, plus the rate of 90 cents per pound per thousand miles or pro rata thereof for greater or less mileage for any excess mails required to be carried in the same aircraft, based on statute miles by the shortest practicable airway distance between points on the route as determined by the Postmaster General; payments to be made monthly and as soon after the close of each month as accounts can be adjusted and settled; said pay to be subject, however, to be reduced or discontinued by the Postmaster General as hereinafter stipulated, or to be suspended in case of delinquency.

It is further stipulated and agreed by the contractor—

1. That in case of failure from any cause to perform any service required by this contract a pro rata deduction shall be made from the compensation of the contractor on account of such omitted service, except that pro rata pay will be allowed for the airway distance flown between stated points on the route traversed on a partially completed trip if no delay in the mails over the ordinary means of transportation has resulted.

2. That deduction from pay may be made for suffering the mails to become wet, damaged or destroyed, or when a

grade of service is rendered inferior to that stipulated in the contract, or for the loss of or depredation upon the mails in the custody of the contractor or its agent, provided the loss is occasioned by their fault, or for other delinquencies, in the discretion of the Postmaster General.

[fol. 4678] 3. That the Postmaster General may annul the contract or impose forfeiture, in his discretion, for repeated failures or for failure to perform service according to contract; for violating the Postal Laws and Regulations; for disobeying instructions of the Post Office Department; for subletting service without the consent of the Postmaster General, or assigning or transferring the contract; for combining to prevent others from bidding for the performance of postal service, and such annulment shall not impair the right of the Department to claim damages from the contractor and its surety.

It is further stipulated and agreed—

1. That if in the opinion of the Postmaster General the development of aircraft should be such as to render the equipment used on the route obsolete, so that it no longer meets the needs of the Department, the Postmaster General may call upon the contractor to provide suitable equipment and in the event of its failure to do so within such reasonable time as shall be given it, may terminate the contract.

2. That mail apartments in all planes shall be made fireproof to the satisfaction of the Post Office Department.

3. That the Department may increase or decrease the number of intermediate stops, or the number of trips per week, and change the termini of the route, dispatch mail on any plane of the contractor flown over the route, and modify or change the schedule as the needs of the service require; and the Department may also extend or curtail the route, with pro rata allowance or reduction of pay.

4. That service on this route may be extended at the option of the Post Office Department from Santiago, Chile, by such intermediate points as the Postmaster General may determine, to Buenos Aires, Argentine, and Montevideo, Uruguay, at not exceeding pro rata allowance of additional pay.

5. That the contractor must make its own arrangements for landing fields, lighthouses, radio stations and such other

aids to navigation as may be necessary for the proper performance of the service.

[fol. 4679] 6. That this contract covers all mails to and from the United States or its possessions, including parcel post; provided that the Contractor shall have the right to make arrangements with intermediate countries for the exchange of local mails between such countries.

7. That during the continuance of this contract, if the postal interests shall require, by mutual agreement between the contractor and the Postmaster General, the contract rate of pay herein may be changed, but shall never exceed the rate herein provided.

8. That the Contractor may be permitted to sublet the service to acceptable persons, by permission of the Postmaster General, at not less than the contract rate of pay.

9. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or agreement or to any benefit to arise thereupon.

10. That the Contractor shall use flying equipment on the route of United States manufacture, shall use other equipment if practicable of United States manufacture, and shall employ necessary pilots and flying crews of United States citizenship where practicable to do so.

The contractor warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

[fol. 4680] This contract is also subject to all the provisions of the advertisement (though not all specifically

stated herein) and to the provisions of the Postal Laws and Regulations applicable to this service.

IN WITNESS WHEREOF, The Parties hereto have executed this contract.

THE UNITED STATES OF AMERICA

By (Signed) HARRY S. NEW
Postmaster General

Signed March 4, 1929 in the presence of

(Signed) E. R. WHITE

PAN AMERICAN-GRACE AIRWAYS, INC.

By (Signed) J. T. TRIPPE, Agent

Signed March 4, 1929.

Witnesses:

(Signed) WM. P. PALMER
W. F. COGSWELL

The United States bonds notes described in the annexed schedule are hereby pledged as security for the performance and fulfillment of the foregoing undertaking in accordance with section 1126 of the Revenue Act of 1926, approved February 26, 1926, and Treasury Department Circular No. 154, dated April 30, 1926.

PAN AMERICAN-GRACE AIRWAYS, INC.,

By (Signed) J. T. TRIPPE, Agent
Contractor

Approved as to fact:

(Signed) W. IRVING GLOVER (eeg)
Second Assistant
Postmaster General

Approved as to form:

(Signed) HORACE J. DONNELLY
Solicitor

[fol. 4681] I, W. F. COGSWELL, certify that I am the Secretary of the corporation named as contractor herein; that J. T. TRIPPE who signed this contract on behalf of the contractor, was then Agent of the said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Signed) W. F. COGSWELL

(Corporate Seal)

CERTIFICATE OF OATH OF CONTRACTOR

I, the undersigned, being employed in the care, custody and conveyance of the mails as contractor on the route named in the foregoing contract, do solemnly swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post offices and post roads within the United States; and that I will honestly and truly account and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear that I will support the Constitution of the United States: So help me God.

(Signed) J. T. TRIPPE, Agent

PAN AMERICAN—GRACE AIRWAYS, INC.
Contractor

Sworn to and subscribed before me a Notary Public this 4 day of March, 1929.

(Signed) CHARLES E. WARREN
Notary Public

My commission expires
Nov. 4, 1930.

(Seal)

[fol. 4682] Schedule of United States bonds deposited as collateral security for performance of service on Route F. A. M. 9, as described in the foregoing contract.

Title of Bond	Coupon	Total face amount	Denomination
United States of America, 3½% Treasury Bond of 1940-43	June 15, 1928, and subsequent coupons attached	$10,000	$10,000 No. 6476 F

[fol. 4683]

W. R. Grace and Company Exhibit 3

January 3, 1928

Memorandum of conversation with Dr. von Bauer

Dr. von Bauer began with the Scadta Company as Manager but in 1921 when they were in financial difficulties, he invested heavily in the Company and became its head. He is now the principal stockholder. Scadta is a Colombian Company. They have recently organized two other companies in connection with their new services.

The Company has a liberal concession in Colombia which while it does not give them any monopoly, does give them certain advantages in the way of exemption from export duty on planes, spare parts, supplies, etc. and the right to conduct what virtually amounts to a private mail service, the Company selling their own stamps and delivering their own letters at destination.

The Company, even on the small service which it is now running, has eleven planes, maintains an airport at Barranquilla which represents an investment of $200,000, and smaller airports at Girardot, Cartagena and Buenaventura. Dr. von Bauer explained that the land plant is quite as important as the flying machinery pointing out the difficulty of maintaining adequate repair shops, and the necessity of

maintaining supplies of repair parts, etc. in order to make necessary repairs at a point so far distant from the factory. He stated that an engine costs $7,000. and the larger Dornier whale planes up to as much as $100,000. Scadta's practice is to write off the entire investment in a plane in twelve to eighteen months although ordinarily the plane is [fol. 4684] in use much longer than that, 4,000 running hours being estimated as the commercial life.

The Colombian service maintains reserve planes which are stationed at strategic points and proceed in search of any plane which does not pass within a certain period after schedule time. Insurance is carried on the planes although the rate is 20% to 25%, though in Scadta I imagine the Company carries part of their own insurance as Dr. von Bauer said they had an insurance reserve of $100,000. Insurance for the pilots is optional with them and paid for by deduction from their salaries. Dr. von Bauer stated that few of the pilots carry insurance as they prefer the cash.

Asked for his ideas regarding a West Coast of South America service, Dr. von Bauer stated that the matter would require very careful study in detail and that it was impossible to reach any conclusion without this study. The question of the best type of plane for the service would itself require very careful investigation. For example, for a part of the service hydroplanes would probably be desirable and for other sections, land planes. On account of the rains between the Canal and Guayaquil, all metal planes would probably be required here. Among the difficulties to be overcome which he mentioned, were the prevalent rains between the Canal and Guayaquil, the fogs from there to Lima and the possible heavy seas below that point, and all along the course, the difficulty of finding suitable landing places. As indicative of the possible cost of such a [fol. 4685] service, it may be noted that on a Florida/Guatemala/Cuba triangular service, which Dr. von Bauer figured on some years ago, he estimated that an investment of $2,000,000 would be required.

[fol. 4686]

W. R. GRACE AND COMPANY, EXHIBIT 4

[Handwritten notations—Mr. Cogswell please note and return, RHP.

Mr. Patchin, I read both and find them very interesting indeed. It looks as if in a year or two it might be practicable to do something on the West Coast.]

New York, March 13, 1928.

D. S. Iglehart Esq.,
Del Ray, Florida.

Dear Mr. Iglehart:—

We have had a very interesting conversation with the aviation representative of the Ford Motor Co., who states, on behalf of that organization, that their three motored all metal plane with a capacity of 12 passengers and 1500 pounds of mail and or freight can be operated at 75¢ a mile including overhead and maintenance for 100,000 miles. This includes depreciating the motors 100% during 100,000 miles of flying and depreciating the plane, other than the motors, 20% a year. Also insurance at 25%.

The Ford people declare that they are achieving this experience in actual service between Detroit and Chicago and Detroit and other points. These figures are far lower than the ones we previously had and, if confirmed, would make the profitable operation of airplanes in conjunction with our steamers much more of a commercial possibility than we have hitherto believed.

I am having some new figures prepared that I think you will find of interest upon your return. Meanwhile, you may find the enclosed report of the Guggenheim Fund worth reading.

With kindest regards, I am,

Very truly yours,

R. H. PATCHIN

RHP.C

[fol. 4687]

W. R. GRACE AND COMPANY EXHIBIT 5

MEMORANDUM

G 21201

DATE March 22, 1928

TO MR. DEPT.

FROM MR. DEPT.

SUBJECT: AVIATION

The following are the operating results of a mail service between Los Angeles and Salt Lake City for one year, ending August 31st, 1927, which has been operating for several years:

The equipment consists of five Douglass planes, single motors, carring 500 pounds pay-load.

In seven months last year this service carried 269 passengers.

Number of miles flown	—	306,597
Number of hours flown	—	3,165.04
Cost per hour	—	66.88
Miles per hour		96.87
Cost per mile		69.00

Based on the above experience, The Western Airways Express now operating a mail and passenger service between San Francisco and Los Angeles with special tri-motor Fokker planes, with maximum speed of 140 miles an hour and a cruising speed of 120 miles an hour, have made the following estimate of costs of service on 365 mile run or 730 miles round trip, totalling 21,900 miles per month:

Overhead	.1153
Traffic	.0533
Maintenance fields	.0204
" equipment	.0893
Transportation (Pilot salaries, etc.)	.1140
Communication	.0168
Depreciation	.2840
Collision Ins. **	.0689
	.7620

** All other insurance included in figures under each headin

[fol. 4688]

PERSONNEL—LOS ANGELES TO SAN FRANCISC

Los Angeles

1 Engineer overhaul mechanism	$175.00
1 maintenance mechanic	200.00
1 Helper	100.00
	$475.00
Radio operator (additional pay)	25.00
	$500.00

San Francisco

1 field manager—chief mechanic	225.00
1 maintenance mechanic	200.00
1 assistant " "	175.00
1 helper—truck driver—office	100.00
1 radio operator	150.00
1 night watchman	125.00
Total per month	$975.00

Pilots

3 pilots @ $150.00 base pay (On 2 off 1 day)	$450.00

24,000 miles @ .025 per mile

Fuel—$9.50 per hour

San Francisco

Hangar
Office
Gas Station
Truck
Radio Station

Salaries—Operation		$2,525.00
Mileage pro rate of present overhead		
President	$500.00	
V. Pres.	350.00	
Traffic Mgr.	250.00	
Crew & Steno	250.00	
Traffic solicitors	400.00	4,275.00
Fuel		2,280.00
Depreciation Flying Equipment		6,250.00
" general "		500.00
Collision Insurance		1,500.00
Other "		300.00
[fol. 4689]		
Forward		$15,105
Maintenance expense other than salaries		1,672.00
		16,777.00

Daily mileage—730
Monthly " 21900

[fol. 4690]

W. R. GRACE AND COMPANY EXHIBIT G

MEMORANDUM

G 2121

DATE, March 22, 1928.

TO MR. ——— DEPT.

FROM MR. DEPT.

SUBJECT: INSURANCE

AVIATION INSURANCE DATA SUPPLIED BY MR. SALMON OF JOHNSON & HIGGINS, INC.

Insurance for Aviation Service of Ford—Detroit, Cleveland

10 passengers—Accident to passengers

$10,000.—for any *one*

$100,000.—aggregate

Rate: $2190.00 per plane per annum

$10,000 / $30,000 public liability
$116.00 per plane per annum

$5,000 property damage
$90.00 per plane per annum

$100,000 Fire—all
$5,000.

Accidental damage
10% deductible
9½% to 17½%

[fol. 4691]

W. R. GRACE AND COMPANY EXHIBIT 7

March 22, 1928.

MEMORANDUM OF CONVERSATION WITH REAR ADMIRAL H. E. CONE, MR. PATCHIN AND MR. COGSWELL. 3 22 28

Admiral Cone felt that a service from Panama South should be undertaken only with tri-motored planes and

he was of the opinion that it would require for the service between the Canal and Callao sea-planes and south of that point, land-planes. He thought that amphibians were not practical for landing in such a seaway as would prevail in these altitudes. He considered navigating conditions favorable, particularly from northern Peru south and not at all favorable between the canal and northern Peru although the excessive heat there would be an adverse factor.

Admiral Cone said he thought it would be impracticable for us to reach any conclusion without employing a competent man familiar with aviation, both in its operation and equipment aspects and having him make an investigation on the ground. He thought Commander Grow of the U.S. Naval mission in Peru, who is in charge of the Peruvian government's air forces probably had more knowledge than any other man of the air navigation situation between Perú and the Canal. He considers Grow a high class man and recommended that we obtain his views. He is now working on the establishment of an American service with the Peruvian Government from Lima to Iquitos.

Admiral Cone thinks the costs shown by Western Airways Express and other efficiently managed aviation companies are conservative; he is especially impressed with the results of the Western Air Express because it has accumulated from their revenues from carrying air mail, passengers and freight, maintaining landing fields, aviation schools and [fol. 4692], taxi service, a substantial surplus. The Guggenheim Fund made a substantial equipment loan to Western Air Express with which it bought the new Fokker planes now being operated between Los Angeles and San Francisco. Admiral Cone expressed the opinion that, with quantity production, the price of planes and engines will rapidly decrease. He thought the Wright Whirlwind engine now sold at $4,000.— actually costs less than $1,000.00 to build. He says that Ford is seeking by all possible means to increase his output in order to bring the plane down to a reasonable price and Admiral Cone thinks

within a few years that airplane engines will cost very little more than first class auto engines and that the planes complete will cost no more than a high class automobile. He concurred in Mr. Patchin's opinion that when a high price plane bought today is depreciated at the end of say two years, it will probably be possible to buy two or more planes with depreciation fund.

As regards metal versus wood and fabric planes, Admiral Cone said that it was an open question. Duralumin, the rustless metal of which the Ford planes are built ~~is~~ has not, in his opinion, been ~~entirely~~ fully established as superior under all conditions to wood and fabric.

Admiral Cone said that very satisfactory progress was being made on devices to prevent stalling, i.e., loss of control of the plane in taking off or in landing. The Guggenheim Fund expects great progress to be made in this respect during the next two years.

The necessity of en route repairs, Admiral Cone said, was likely to be over-estimated by steam-ship men and likewise the ground personnel needed for operations and repairs at the various ports of call. The modern airplane [fol. 4693] engine requires very little repairs that can be made en route. If it goes wrong it would probably have to be sent back to the factory for an overhaul, therefore the repair problem is met by having spare engines distributed at certain points along the route. If engine trouble develops, the tri-motored plane may be expected, ordinarily, to reach the next port where a spare engine is located whereupon the spare is substituted in a very few minutes. Except in the case of a serious smash, other parts of the plane seldom requires repairs as the mechanism is simple and accessible.

In response to our request, Admiral Cone mentioned the following persons experienced in aviation who might be available for employment:

Chas. T. Blackburn.
c/o L. A. Young Industries,
208 La Salle Street,
Chicago, Ill.

Former Commander in U. S. Navy; resigned to become assistant to general manager of air transport company operating a mail service from New York to Chicago; resigned as result of disagreement in organization. Is understood now to be figuring on establishment of a passenger air service from New York to Chicago.

J. Parker Van Zant.

Formerly U. S. Army officer, now running Scenic Airways Corp'n. General Manager of company operating planes out of Detroit. This is a service which takes tourists by airplane to Grand Canyon, Yellowstone Park and other points of scenic interest. This concern is understood to be backed by Mr. Mayo, Ford's chief engineer, H. Coffin and other aviation experts.

[fol. 4694]
Reid Chambers,
Kew Gardens, Long Island.

Organizer of the Florida Airways from which he later retired. Has studied thoroughly the question of Caribbean air transportation. Understood to be very intelligent with wide knowledge of aviation, but usually disagrees with associates.

Major Bane,
P. O. Box 506,
Monterey, Calif.

Formerly head of the design staff of U. S. Army air force. Has high class aeronautic experience. Retired or resigned from Army after dispute with General Patrick. Reported to be well off financially. Now raising chickens in California.

Admiral Cone's comment on various planes, is as follows:—

Boeing Company of Seattle—Have not yet built tri-motored planes but have built two-motored. Very progressive and able company.

Ford and Atlantic Aircraft Corporation (Fokker) are the only concerns now building tri-motor planes. Ford all of metal. Fokker, have metal fuselage—remainder of plane is fabric and wood.

Loenig builds excellent amphibians.

Sikorski is producing very excellent construction in a single-motor amphibian now being used by Standard Oil Co. in Colombia and Venezuela.

[fol. 4695]

W. R. GRACE AND COMPANY EXHIBIT 8

[Emblem]

U.S. ARMY PAN AMERICAN FLIGHT

April 20, 1928.

My dear Mr. Patchin:

Since you were in the other day discussing the matter of an air line from the Panama Canal southward to Valparaiso, I have given this matter additional thought which leads me to believe that perhaps between my own personal files of information and the library in the Pan American Union, sufficient data are available to warrant the tentative layout of an air line over this route.

I realize investigation would be quite costly and this should be reduced or entirely avoided if at all possible. There is no doubt that the line would have to follow the coast as far as Peru before a choice became available of a water route or land route, and even in the southern part of Peru the route would have to again follow the coast line. In Chile, there is again the choice of the route following the longitudinal railroad or the coast line. With regard to the inland routes, I have little or no information; but after consideration of all the factors involved, I am quite sure that the coast line route is to be preferred and, in fact, is the only practicable route over a large

portion of the journey. I, therefore, believe that at least for the present the consideration of interior air lines paralleling the coast might be disregarded.

Again with an idea of reducing cost and at the same time retaining a reasonable degree of safety in flight, I feel that the single motored amphibian plane would be very suitable. The tri motored plane would have an excellent effect on the morale of the passengers, but the air cooled radial engine now coming into extensive use in airplane construction has proved its reliability to such a marked extent that it is a very dependable motor. The Loening amphibian is now being built with a Wasp, 9 cylinder, air cooled motor and has given excellent results. The cabin type of plane built by Mr. Loening and which is being exhibited at the Aircraft Show in Detroit, this week, has great possibilities for commercial use.

[fol. 4696] I, therefore, believe you would be perfectly justified in going ahead on plans for a commercial air line from Panama southward along the Pacific Coast, utilizing the single motored amphibian type of airplane. I should be glad to go into this matter more thoroughly with you at any time that you might desire should you care to make further investigation.

Assuring you of my great interest in the success of commercial air ~~factors~~ *ventures* and of my willingness to give whatever assistance I can, I am,

With kindest personal regards,

Very sincerely yours,

/s/ H. A. Dargue
H. A. Dargue,
Major, Air Corps.

Mr. Robert H. Patchin, Manager,
W. R. Grace & Company,
7 Hanover Square,
New York, N. Y.

[fol. 4697]

W. R. Grace and Company Exhibit 9

[Emblem]

U.S. ARMY PAN AMERICAN FLIGHT

May 26, 1928.

My dear Mr. Patchin:—

In reply to your letter of May 23rd, I shall be glad to go ahead at the earliest possible moment with the preparation of as comprehensive a report as my information permits on an air transport route from Colon to Valparaiso.

I am completely tied up for the next few days with pending legislation but with the adjournment of Congress in view on next Tuesday, it would appear that immediately thereafter I shall be able to start the study you desire.

I shall be very glad to see you when you come to Washington next week.

With very kindest personal regards, I am,

Sincerely yours,

/s/ H. A. Dargue
H. A. Dargue,
Major, Air Corps.

Mr. R. H. Patchin,
Mgr. W. R. Grace & Co.,
Post Office Box 286,
Hanover Sq., New York.

[fol. 4698]

W. R. Grace and Company Exhibit 10

[Letterhead of Nitrate Agencies Ltd., Antofagasta—Tocopilla—Taltal—Pisagua]

Personal.

No.....

[Handwritten notation—Mr. Patchin—Mr. Cogswell—Pls note & return—P.]

Iquique,

12th. April, 1928.

Luis Valverde, Esq.
c/o Messrs. W. R. Grace & Company,
Hanover Square,
NEW YORK.

Dear Valverde,

AVIATION.

I am in receipt of your letter No. 4203 and note your enquiries in regard to the possible development of the United States Mail Service to the West Coast, and I will make the necessary investigations and keep you posted on anything that should develop.

As a coincidence there appeared in the "Provincia" yesterday an article in regard to an Air Mail Service from Santiago to Iquique for which Señor Luis Testart already holds a concession, the reading of which will no doubt be of interest to you.

Assuring you that I will keep you fully in touch with anything new,

Yours very truly,

F. J. Harpel.

FJH/CET.

NITRATE AGENCIES Ltd.
Iquique
Antofagasta—Tocopilla
Taltal—Pisagua

Form 4

[fol. 4680]

W. R. Grace and Company Exhibit 11

[Letterhead of Pan American Airways, Inc., New York City.]

August 14th, 1928.

Mr. W. F. Cogswell,
c/o The Grace Line,
10 Hanover Square,
New York City.

Dear Mr. Cogswell:

In reading over the draft memorandum which I handed you in Mr. Hoyt's office yesterday, I find that several corrections should have been made.

I have made these corrections and am attaching herewith revised copy of the memorandum.

I have arranged to have Mr. Harris return to New York on Tuesday, August 21st. At that time, he will be prepared to spend several days calling on the major American companies operating in Peru, to tie up, if possible, some southbound mail revenue.

Please telephone me as soon as you are prepared to further discuss this matter.

In the meantime, I will have made up some detailed figures covering the initial six months' operations, and if possible, some sort of figures covering capital requirements for the year following the acquisition of a United States mail contract.

Yours very truly,

/s/ J. T. Trippe
J. T. Trippe

JTT s
Enclosure.

[fol. 4700]

W. R. Grace and Company Exhibit 12

Similar letter to:
The Pacasmayo Agencies Co., Pacasmayo;
The Paita Agencies Co., Paita;
Grace y Cia., (Peru), Secc. Piura, Piura;
Grace y Cia., (Peru), Secc. Trujillo, Trujillo;
Vda. de Piedra e Hijos, Pimentel.

November 7th. 1928

International Petroleum Co., Ltd.,
TALARA.

Dear Sirs,

PERUVIAN AIRWAYS CORPORATION.

Our New York House have entered into an arrangement with the Aviation Corporation of the Americas, which owns all the stock of the Pan American Airways Inc., to form a Corporation under the name of the Peruvian Airways Corporation. This new company has taken over the mail contract and concession previously held by the Huff Daland Dusters, Inc., and will operate between Lima and Talara the airplane which up to the present has been operated by the Huff Daland Dusters Inc.

This service, we hope will be the nucleus of a through service between the United States and Chile and there is consequently the possibility that the service will be augmented in the future. The success of the primary operation will naturally depend on keeping expenses to a minimum and obtaining as much business as possible. With this in view we are appointing you as agents of the Company in Talara and enclose herewith copy of the present proposed schedule. For the present as Agents we will give you a 5% commission on any business either cargo or passengers which you may secure for the service. In addition an Agency Fee of S/. 25.00 per month will be paid you for the present and naturally when the service is augmented by the addition of more airplanes, this Agency Fee will be

[fol. 4701], increased. However, we are putting this at a low figure to start with in order to give the Company an opportunity to stand on its own feet and the success of the venture will be a great deal due to the interest taken by Agents with the idea of using every effort to stimulate this business and be of all assistance possible.

Mr. Harold R. Harris is Vice President & General Manager of the concern with offices in Grace Building in Lima and consequently he will be in charge of the operations and will from time to time give you full details as to just what he requires of his Agents in order to make the service benefit and have everything running smoothly.

As W. R. Grace & Co., are 50% holders in the Peruvian Airways Corporation, we would like to have you assist as much as possible in helping us to make this venture a success and we assure you that any assistance you can give will be greatly appreciated.

For your information we enclose herewith clipping from a recent number of the "WEST COAST LEADER" which gives an outline of the importance of the new service and the possibilities for its future.

Trusting you will be able to help the Peruvian Airways Corporation in your district, we are,

Yours very truly,

p.p. W. R. Grace & Co.,

CGB/h.

copy to Mr. Harris
copy to New York

[fol. 4702]

W. R. Grace and Company Exhibit 13

October 22nd, 1928.

Mr. R. H. Patchin,
W. R. Grace & Company,
10 Hanover Square,
New York City.

Dear Mr. Patchin:

I am enclosing, herewith, copy of letter received from the State Department today, answering my letter of October 16th. This letter is mild, compared to the attitude taken by Mr. Francis White, Assistant Secretary of State, in conversation. He takes the position that Pan American Airways, Inc., has been favored in every way in establishing itself in the Caribbean area, and that the Department looks to this Company to carry the banner of American Air Transport on the West Coast of South America.

He has advised emphatically that now is the proper time to begin negotiations with Chile, because of the failure of the French to live up to their concession, and urges most strongly that we make plans to open up negotiations with the Chilean Government, for a definite concession, in the very near future.

From what little I know of the South American Air Transport situation, I feel that he is correct, and that we can possibly obtain, at this date, a much more favorable concession than we could hope to get at a later date.

In view of the fact that we have no one available at the moment to send to Chile, for the purpose of undertaking negotiations, it occurred to me that you might be able to have one of your men down there undertake these negotiations for us. We could supply the form of concession desired and give him the benefit of the experience we have had in negotiating this concession in Central America.

If this suggestion meets with your approval, I would be glad to talk it over with you in further detail, at your convenience.

Yours very truly,

John A. Hambleton,
Vice President.

JAH:B
cc: W.F.C. V

[fol. 4703]

W. R. Grace and Company Exhibit 14

chieftain 169 from METZNER. 11.14.28

1 169: your 224
2 27th and 28th word

Form B sent for your information study closely cable before our meeting pan american airways wednesday your opinion *how much of it obtainable from chile*

we and
3 american ambassador approached
4 minister and
5 postal authorities (in) our opinion
6 is no definite
7 declaration will be
8 obtained until we
9 present preface
10 to Min del Interior
11 which we consider
12 shouldbe done immediately
13 giving it maximum
14 publicity so as to
15 create popular
16 feeling and
17 ahow ambassador
18 create similar
19 feelingwith (feeling with)

20 government as we expect
21 difficulty with Min de Guerra
22 who is strongly in favor of
23 maintaining chilian
24 internal air
25 service in the hands of
26 army or at
27 least insist upon
28 having chilian
29 pilot sentence ends our opinion
30 is there would be
31 difficulty some
32 points clause-s
33 7 to 13 inclusive
34 director-s general
35 post office fear-s
36 too long a
37 period clause 16
38 X Also we consider it advisable
39 get Daville
40 communicate with his
41 government about
42 form B

Mr Valverde
Mr Patchin
Mr Cogswell.

[fol. 4704]

W. R. Grace and Company Exhibit 15

chieftain 172 from METZNER. 11.16.22

1 172:

2 our 169

we and american ambassador approached minister and postal authorities etc.

pan american airways

ambassador

3 suggests that you keep
4 in close touch with state dep

[fol. 4705]

W. R. Grace and Com

moradas 14 from SANTIAG

1 private
2 14: referring your
3 chieftain
4 cable 1
5 to Valparaiso.
authorise you
behalf of chili
form under uni
application
6 formally presented
7 (to the government ambassad
(today
8 cooperating
9 actively message ends

department

Mr. Valverde
Mr Patchin
Mr Cogswell

OMPANY EXHIBIT 16

AGO (Grace v. Cia) 12.19.28

to present application on
ian airways which we will
ited states laws etc.

lor

Mr Patchin
Mr Cogswell

(fol. 4706)

W. R. GRACE AND COMPANY EXHIBIT 17

chieftain 14 to METZNER. 12.24.28

1 14: your 14
2 from Santiago
Chilian Airways: application forma
presented today to the government
ambassador cooperating actively
3 organization Chilian Airways corporation
4 has been completed

Mr Patchin
Mr Cogswell

(fol. 4707)

W. R. GRACE AND COMPANY EXHIBIT 18

Moradas 18 to SANTIAGO (Grace) 2.7.29

1 18:
2 your 20 44th to 46th word
get state department cable his instruc-
tions without delay
3 state department promised
4 yesterday cable
5 ambassador assist you
6 we will follow
7 this up sentence ends
8 chilian ambassador promised
9 cable government
10 on our behalf sentence ends he
11 said would
12 remind them him that
13 when concession
14 given Latee
15 oere he
16 asked that
17 door be kept

18 open for
19 american companies
20 and government
21 replied to him
22 'door was
23 open and would
24 remain open
25 we believe inadvisable
26 you disclose
27 this information but
28 suggest that you emphasize
29 that we had been
30 led to understand
31 chile would
32 welcome american
33 air transport-
34 16th to 18th word

permit to carry international mail o

essential
35 for success of
36 undertaking that
37 permit also
38 cover passengers

Mr Iglehart
Mr Valverde
Mr Patchin

(Fol. 4708)

moradas 20 from SANTIAGO (Grace) 2.7.29

1 20: your 15
2 3rd to 5th word

cable essential points your application

soon*
3 private letter 8500
4 49 dated
5 december 18th 1928
6 the whole thing
7 is that
8 military regime
9 against our proposal
10 as presented

11 and will not
12 listen to reason
13 war department still
14 opposed have
15 hopes obtain
16 permit carry
17 international mail
18 only if this
19 obtained what do you
20 propose regarding
21 landing place
22 as cannot use
23 those of
24 army or
25 navy
15th to 18th word
are boeing or other united states companies seeking concession
26 negative reply
19th and 20th word
is american ambassador supporting
27 affirmative reply ambassador
28 cabled washington
29 today
asking for i.e. february 6th
30 definite instructions to make
31 energetic representation
32 chilian government allow
33 international mail
34 in United States
35 airplanes
36 to deliver into
37 chile as far as

continued.

[fol. 4709]

from Santiago. 2. 2.7.29

38 santiago up to the present
39 he has acted upon
40 our suggestion and

41 without government
42 instructions ambassador
43 suggests you
44 get state department
45 cable him
46 instructions without delay
47 your 16

essential convince minister importance
serious character our project etc.

we have
48 repeatedly put
49 forward all your
50 arguments had
51 interview Min del Interior
52 today

i.e. february 6th

he is
53 favourably disposed promised
54 discuss our
55 petition with
56 Min de Guerra and
57 will willingly
58 sign any
59 concessions latter's
60 agrees to (it)

Mr Valverde
Mr Patchin

[fol. 4710]

W. R. Grace and Company Exhibit 19

moradas 19 to SANTIAGO (Grace) 2.8.29

1 19:
2 your 20 57th and 58th word

mail in united states airplanes:

deliver as far as santiago

3 insufficient essential
4 have right

5 carry united states
6 mail through to
7 argentine uruguay

Mr Valverde
Mr Patchin

[fol. 4711]

W. R. Grace and Company Exhibit 20

moradas 24 from SANTIAGO (Grace) 2.27.29

1 24: your 28
if these points threaten delay
permit beyond today try to get
permit immediately leaving
points for early adjustment

2 owing to impossibility
3 obtaining official
4 permit in time
5 we requested ambassador
6 to assure if it would be
7 granted and
8 Min de Relaciones Exteriores told
9 him this morning
10 after cabinet
11 meeting that
12 decision was
13 taken to give
14 permit to
15 CAC to
16 enter and
17 fly in chile
18 also use
19 temporary landing
20 fields and
21 give some other
22 facilities and
23 that this
24 decision would be
25 notified to the

26 U S Embassy some
27 time this week
28 ambassador is
29 also cabling
30 the foregoing
31 to state department

Mr Valverde
Mr Patchan

[fol. 4712]

W. R. Grace and Company Exhibit 21

(TRANSLATION)

moradas from SANTIAGO 2-28-29

Our twenty-five

following are conditions stipulated in official memorandum received late this afternoon from minister of interior concerning permit quote

"1—It shall be understood that those who obtain the permit submit themselves to Chilean laws on public health, police, custom house, or those of any other category.

"2—The permit shall be understood to be conceded subject to the dispositions of the Havana Convention before mentioned insofar as these are applicable to it.

"3—The frontiers shall be crossed by the planes on their entering the country or on their leaving same, through Tomasiri in the North, and through Uspallata in the West.

"4—Hydroplanes or flying boats shall only fly over territory or waters under Chilean jurisdiction after submitting themselves to an examination by custom house, public health and police authorities in the airdrome or port nearest to the point of crossing the frontier.

"5—The pilots of the ships must be nationals of the United States or Chile.

"6—When flying over Chilean territory or waters they must be accompanied by a pilot of Chilean nationality.

"7—The landing points in each place in the Republic must be submitted for the approval of the Government.

"8—During the life of the permit the landing fields of the concessionaires can be used by the Military Aviation Department without charge to the state.

[fol. 4713] "9—This permit does not include any authorization or concession of commercial or postal character.

"10—It shall run for a period of no longer than six months while the basis for a definite agreement is established, and

"11—The permit shall not have any character of monopoly or privilege.

(Signed) Guillermo Edwards Matte"

[fol. 4714]

W. R. Grace and Company Exhibit 22

chieftain 9 from METZNER. 3.2.29

1 9: your 59
with reference to your negotiations with government to get as favourable as possible an air concession etc.

2 we and ambassador
3 absolutely sure
4 no competitors have
5 or are applying for
6 concession-s Montg-
7 omery entirely
8 unknown here ?? ambassador
9 is ready to
10 push all possible
2nd to 5th word
your negotiations with government to get as favourable as possible an air concession

11 but before proceeding
12 act energetically

13 wish to know
14 if you have got
15 contract as otherwise
16 we might be adding
17 competitors

Mr. Patchin.

[fol. 4745]

W. R. Grace and Company Exhibit 23

moradas 32 to SANTIAGO (Grace) 3.42

1 32: american ambassador
2 report s state department
3 Late cocre
4 urgently seeking
5 contract carry
6 chilian mail
7 bolivia peru sentence ends
8 this obviously
9 designed to forestall
10 our service think you should
11 urgently claim
12 same opportunity also
13 pointing out
14 that we will be
15 in best
16 position furnish
17 this service as
18 our contract with
19 united states government requires
20 us to carry
21 mails to the United States
under 22 44 arrangement
23 made by united states government
24 with foreign
25 government s such as
26 chile therefore
27 thank greatly
28 to advantage chile

29 make no compromise
30 with Late-
31 coere pending
32 full discussion of our
33 service sentence ends
34 our service will be extended
35 from mollendo
36 into chile
37 immediately operating
38 personnel
39 additional equipment can reach
40 there message ends

Mr Valverde
Mr Patchin

[fol. 4716]

W. R. Grace and Company Exhibit 24

[Handwritten notation—Copy to Pan Grace]

POST OFFICE DEPARTMENT
SECOND ASSISTANT POSTMASTER GENERAL
WASHINGTON

May 6, 1929.

Mr. R. H. Patchin,
Care W. R. Grace and Company,
Hanover Square, Post Office Box 286
New York City.

My dear Mr. Patchin:

Following up your telephone conversation and, as well, telegram of even date, I communicated with Assistant Secretary White of the State Department who was glad to have the information and advised me that he would cable tonight to Ambassador Culbertson at Santiago of the satisfactory outcome of the matter of the contract between the Post Office Department and the Pan American-Grace Airways.

I also suggested that he carry in his cablegram the information that the service would be established to Mollendo

at an early date and the extension would come very soon into Chile.

Am glad to have been of service to you in this matter.

Very sincerely yours,

W. IRVING GLOVER
Second Assistant Postmaster General.

[fol. 4717]

W. R. GRACE AND COMPANY EXHIBIT 25

[Western Union Telegram Form]

May 6 1929

W. IRVING GLOVER
SECOND ASSISTANT POSTMASTER GENERAL
POST OFFICE DEPARTMENT
WASHINGTON, D. C:

PAN AMERICAN GRACE AIRWAYS REPRESENTATIVE SANTIAGO, CHILE CABLES IMPORTANT STATE DEPARTMENT OFFICIALLY ADVISE AMERICAN AMBASSADOR SANTIAGO OUR CONTRACT CONFIRMED. RESPECTFULLY REQUEST YOUR DEPARTMENT ARRANGE STATE DEPARTMENT SEND SUCH MESSAGE TODAY AS IT WILL HELP EXPEDITE OUR ARRANGEMENTS EXTENSION SERVICE CHILE

R. H. PATCHIN

[fol. 4718]

W. R. GRACE AND COMPANY EXHIBIT 26

morades 134 from LIMA. 1.25.29

1 134: following is for Patchin

2 press reports

3 Lindberg

4 will fly to

5 peru american ambassador

6 advises if you confirm this

7 he can arrange
8 special invitation
9 extended by
10 president of peru
11 which he feels
12 will give
13. wide propaganda
14 to peruvian airways corporation
15 and help him in
16 his desire to
17 eliminate competition

Mr. Patchin.

[fol. 4719]

W. R. Grace and Company Exhibit 27

(TO:—W. R. GRACE & CO., LIMA) (PERU)
(CABLE NO. 241 DATED JAN. 26TH.1929)

-0-0-0-0-0-0-

(MORADAS CABLE)

1— (MORADAS)CABLE NO. 241 REFG. TO YOUR CABLE NO. 134 6TH.WORD RE.LINDBERG PLY TO PERU ADVISE IF YOU CONFIRM)
2— WE ARE ADVISED HE HAS NO
3— PLANS GO
4— SOUTH PANAMA
5— AT THIS TIME.
6— SENTENCE ENDS TELL
7— AMBASSADOR GREATLY APPRECIATE
8— HIS INTEREST

(MR.RHP)

[fol. 4720]

W. R. GRACE AND COMPANY EXHIBIT 28

[Handwritten notation—Mail Contract]

ASSISTANT SECRETARY OF STATE
WASHINGTON

March 16, 1929.

Dear Mr. Patchin:

I received this morning your letter of March fifteenth. After what you said to me by phone yesterday, I immediately sent a further and fuller cable to the Legation in Ecuador setting forth this Government's interest in having the air mail carried through to Chile, and I hope this will be of some use in meeting the attacks against the Pan American Grace Airways, Incorporated. If there is anything further that we can properly do, please let me know.

Yours, very sincerely,

/s FRANCIS WHITE

Mr. R. H. Patchin,
Care of W. R. Grace and Company,
Hanover Square,
New York, New York.

[fol. 4721]

W. R. GRACE AND COMPANY EXHIBIT 29

ASSISTANT SECRETARY OF STATE
WASHINGTON

March 20, 1929

Dear Mr. Patchin:

With reference to recent correspondence, I quote herewith the following telegram dated March 19, 2 p.m., which we have just received from the Legation at Quito:

"Ratification not necessary. No effective opposition in Assembly. Plane Lioning arrived Guayaquil yesterday."

Yours, very sincerely,

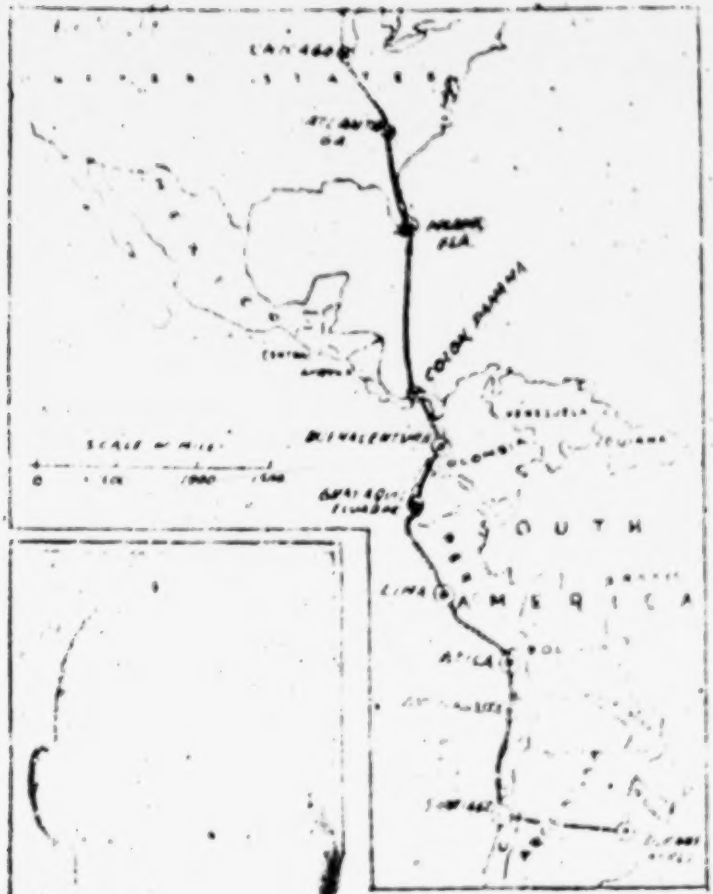
/s/ FRANCIS WHITE

Mr. R. H. Patchin,
Care of W. R. Grace and Company,
Hanover Square,
New York, New York.

MATERIAL UNSUITABLE FOR MICRO-CARDING

CHICAGO DAILY NEWS Oct. 18, 1928.

ROUTE OF RECORD AIR FLIGHT



Junius B. Wood (below), a staff correspondent of The Chicago Daily News, will attempt to traverse the air route indicated above, starting to-

JUNIUS B. WOOD BEGINS LONGEST AIR MAIL FLIGHT

Hops from Buenos Aires

told. Today I start on an air flight with a letter for the United States 9,000 miles away on the other side of the hemisphere, from a continent basking in sunny springtime to a north of autumn shivers over the world's longest mail line.

Other letters may travel farther but none without change from land to sea, while this one nearer each day on man-made wings until it reaches our Atlantic coast and is passed up to other planes humming through the night to the farthest corner of the United States on the world's fastest mail delivery.

Each day the story will be told. From the days when the Grecian bards sang of the winged Mercury, the world's first messenger, the sagas of the mail service have been sung—tireless Indian runners, trotting slippered postmen through bandit-ridden China, reindeer teams in Siberia, camel trains across the desert, long black trains thundering past lonesome stations in the night, chubby hands stretching on stubby toes to drop a letter in the corner box and the faithful man in gray bringing a letter. All this is the romance of travel added [illegible]

A Century's Progress

From the days of the pony express until the planes depart on [illegible] with a search through the air [illegible] years ago [illegible] of mail [illegible] first flight starts here [illegible] 37 years from the day [illegible] discovered the continent. In those days, before radio and cable linked the world, travelers disappeared for a few years when they sailed across the sea. Today a letter comes from continent to continent in nine days. Those lonely voyagers have gone into history as the world's greatest adventurers. Perhaps those who daily fly in planes over mountains and seas are greater adventurers to an age when adventure pales on a surveyed world.

This air flight, which starts today is the second on the long journey and it may show that possibly wind and rain will provide thrills, but whether there be sunshine or clouds, nature will be picturesque and the story of how the mail came through always will be interesting.

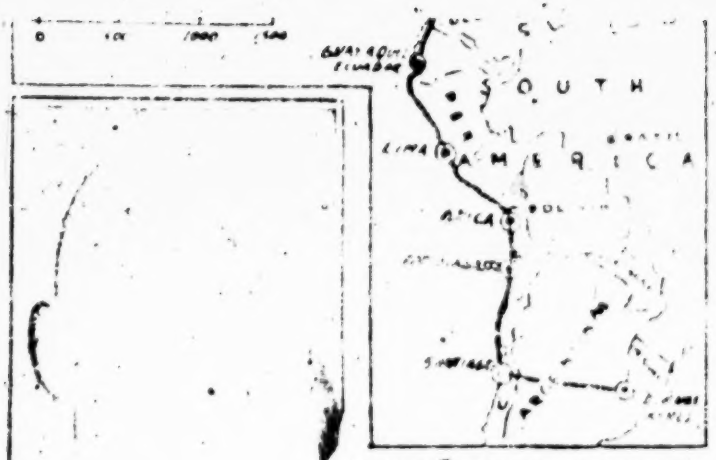
[illegible]

ing fogs, storms and weather changes. The schedule is hard to keep on land and even harder in the air. But this United States mail plane has a provisional time table and each evening should find the letter that starts today and this correspondent nearer home. Our schedule should be also as follows:

Tonight a short flight, which is not so far a part of the regular service Santiago, Chile, tomorrow, Antofagasta, Chile, Sunday, Arica, Chile, Monday, Lima, Peru, Tuesday, Guayaquil, Ecuad[illegible] Wednesday, Buenaventura, Columbia, Thursday, Colon, Panama, Friday, Managua, Nicaragua, Saturday, and Miami, Fla., Sunday.

Each day will tell its own story and today the voyage starts.

W. F. Hall Printing Company Exhibit



Junius B. Wood (below), a staff correspondent of The Chicago Daily News, will attempt to traverse the air route indicated above, starting tonight from Buenos Aires for Chicago. The Pagal Air Line will carry Wood from Buenos Aires to Santiago, Chile. From that point, he will travel in a Grace Lines plane to Panama, thence by Pan-American plane to Miami. At Miami he will transfer to a plane operated by the Pitcairn company which will carry him to Atlanta. The last leg of the journey will be made in a Nicaraguan plane operated by the Interstate Lines.

JUNIUS B. WOOD BEGINS LONGEST AIR MAIL FLIGHT

Hops from Buenos Aires on 9,000-Mile Trip with Letter to U. S.

CROSSING 13 NATIONS

BY JUNIUS B. WOOD

SPECIAL CABLE

To The Chicago Daily News Foreign Service

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Buenos Aires, Argentina, Oct. 18 — The story of the world's longest and fastest air-mail route, the crowning achievement in the romance of mail delivery through the ages, is to be to drop a letter in the corner box and the faithful man in grey bring us a letter. All this is the romance of travel and [illegible]

A Century's Progress

From the day of the pony express until the radio, departing from enabled two continents with an area through the air waves, [illegible] years ago [illegible] progress symbolizes a century of man's triumph over nature. A week ago the first flight started here, just 437 years from the day Columbus discovered the continent. In those days, before radio and cable linked the world, travelers disappeared for a few years when they sailed across the sea. Today a letter comes from continent to continent in nine days. Those lords voyagers have gone into history as the world's greatest adventurers. Perhaps those who daily fly in planes over mountains and seas are greater adventurers to an age when adventure palls on a surfeited world.

This air flight which starts today is the second on this long journey and it may show that possibly wind and rain will provide thrills, but whether there be sunshine or clouds, nature will be picturesque and the story of how the mail came through always will be interesting.

Crosses Thirteen Countries

This mail route crosses four times between here and Miami the Cordilleras known as the Rocky mountains in North America and the Andes in South America. It flies over a part of the Pacific ocean, the Gulf of Mexico and the Atlantic. Over Panama, where ships seem below like toy boats in a ditch, and over Nicaragua, where another great canal soon will link the two oceans. It crosses thirteen countries and connects with as many more, stretching through the air from the Arctic on the north to the Antarctic on the south, in that long flight skimming over the sea along the coast, soaring 20,000 feet above the snow-mantled Andes, fac-

WOOD CONQUERS ANDES STORM; TACNA IS NEXT

BY JUNIUS B. WOOD.

SPECIAL CABLE

To The Chicago Daily News Foreign Service

Copyright, 1929, The Chicago Daily News Inc.

Arica, Chile, Oct. 21.—Landed at El Buitre airfield in Tacna province at 5:32 p. m. today.

BY JUNIUS B. WOOD.

SPECIAL CABLE

To The Chicago Daily News Foreign Service

Copyright, 1929, The Chicago Daily News Inc.

Antofagasta, Chile, Oct. 21.—The first air mail for the United States which left Buenos Aires Saturday morning stopped here today after covering 1,276 miles of its 9,000-mile flight.

Under low-hung clouds with lightning playing on the tips of the wings, the big metal plane in which I was a passenger passed over Argentina Andes and was halted for the night at Mendoza, Argentina, by a blizzard raging around the peaks of the Andes. It fought its way across the barrier on Sunday to Santiago, Chile. The Chilean mail was put aboard another plane and at 4:38 p. m. we were 420 miles farther north along the Chilean coast. The schedule takes us to Tacna on the northern limit of Chile's long seacoast today.

A steady twenty-four hour rain had become a downpour when half a dozen automobiles bringing the Argentine mails and airplane staff slipped and slithered on the muddy road to the Pacora field after daylight Saturday morning. The bespectacled postal agent was accompanied by his corps of clerks who watched to see the plane and a serious policeman.

The guard carefully counted the mail bags and had the pilot sign a manifest. Argentina takes the air mail seriously and all was properly sorted in separate bags to drop off at the different stops on the journey from Mendoza to faraway Miami.

The little group on the field was huddled under the shelter of one of the big wings of the trimotor Ford metal plane. The engines were being warmed up. The Pan-American commander, Capt. Elmer Boyd, and Capt. Ralph O'Neill, veteran Andes flyer, were in the cockpit. Capt. Boyd was to pilot the plane to Mendoza, 600 miles away, and Capt. O'Neill was to fly it on to Santiago.

Low-hanging patches of white clouds flecked the fields of green and brown below. Then the big plane found itself between two floors of solid cottony clouds, white above and white below. All else was invisible, like a bare room stretching to infinity. In thirty minutes the upper clouds changed into rain. A hole appeared below the plane which dived through it and skimmed 100 feet above the ground.

Traveling 110 Miles an Hour

We had been flying by compass but now the Los Andes railroad station showed where we were. The speedometer was registering 110 miles an hour. We followed the railroad tracks where there was brief glimpse of Argentine windmills bobbing up as an unpleasant surprise.

Clouds are not interesting and I slept for two hours. I was awakened by a shout of "the big prairie fire" nearly jolted me from my seat and Williams the San Francisco pilot and Peter Pickup, the mechanic, both looked back, laughing heartily. Below was a herd of cattle throwing dignity to the winds and with tails out and heads down charging wildly across the field. "The sun was shining brightly and the plane with a playful dive stampeded the herd. "Cheer up the sun is shining" shouted Williams above the roar of the motors. "See Argentina first!"

The sunshine lifted to a brighter red the two bare heads of the young Americans in the cockpit and I could not fail to thrill with patriotic pride at the thought of what Americans are doing and daring in distant lands.

Start to Climb Foothills

Half an hour of sunshine and then rain again. At 11:30 a. m. the big squares of cultivated fields and grazing herds were left behind and we slowly started to climb the bare and scrubby foothills of the Andes. Scattered haciendas appeared and then solid vineyards of grapes along the banks of the rivers and streams. Then we were over the Andes.

"It was a beautiful day yesterday," said one of the aviation enthusiasts at Mendoza yesterday. "We could see the entire Cordilleras from here."

Storm Grows Worse

But it was not beautiful this afternoon and hourly reports came that the storm was getting worse. "That would cover our wings with ice in ten minutes and we could not fly," said Williams. So he looked up the plane in the field and went to the Plaza hotel, which is the best in Argentina. This was some satisfaction.

In the last fortnight I have flown across the Andes twice but the first time we needed to rise only 18,500 feet to surmount nature's barrier. Every minute and every hour its mood changes from a smiling air to strong storms and capricious winds. On each flight the mail pilot takes a new look and new chances of slipping through when and how he can. The orders are not as to how is to be done but that is to get the mail through.

Andes Hidden by Clouds

Dull blue clouds hid the Andes when we returned to the Los Tamarindos airdrome at Mendoza on Sunday morning. Toward the south a break showed lighter clouds over another pass 4,000 feet lower than the Uspallata pass, but Chile will not permit commercial airplanes to cross there, probably believing that some military secret would be disclosed. A report from the peaks said that the winds were still strong, but that the snow had stopped.

"We will make a try for it so that you will know what this jump is like," said the red-haired pilot.

"Bumpo" agreed the lone policeman carrying a rifle, who had stood on the field guarding the plane through the night a symbol of Argentina's vigilance over the mail.

None of the spectators who had thronged the field on the previous day showed up that early, not believing that an attempt to cross the mountains would be made.

It did not look any too good with a solid wall of clouds banked along the base of the mountains, but we started and flew steadily, enveloped by fog. Mendoza is 2,900 feet above sea level. We were off the ground at 8:13 o'clock Sunday morning. We were 7,000 feet up at 8:20, 9,500 at 8:22, 13,000 at 8:28, 17,500 at 9 o'clock,

ning playing on the ups of the wings, the big metal plane, in which I was a passenger, passed over Argentina Saturday and was halted for the night at Mendoza Argentina by a blizzard raging around the peaks of the Andes. It fought its way across that barrier on Sunday to Santiago Chile. The Chilean mail was put aboard another plane and at 4:38 p. m. we were 436 miles farther north along the Chilean coast. The schedule takes us to Tacna, on the northern limit of Chile's long seacoast, today.

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The guard carefully counted the mail bags and had the pilot sign a manifest. Argentina takes the air mail seriously and all was properly sorted in separate bags to drop off at the different stops on the journey from Mendoza to faraway Miami.

The little group on the field was huddled under the shelter of one of the big wings of the trimotor Ford metal plane. The engines were being warmed up. The Pan-American company's agent signed the last documents including one disclosing that I was an assistant pilot. The pilot and mechanic were in the cockpit and I with the mail was in the big passenger compartment built to carry fourteen, which eventually it will do over the Andes.

The motors tempo increased with a deafening roar. James D. Summers, vice-president of the Pan American company, holding a watch. There was a small group of spectators who were shivering on the lee side of the plane. Mr. Summers waited until it was exactly 8 o'clock when he waved his

chauffeur-was registering 110 miles an hour. We followed the railroad tracks where there was less change of an Argentine windmill bobbing up as an unpleasant surprise.

Clouds are not interesting and I slept for two hours. I was awakened by a flop of the big plane that nearly lifted me from my seat. Ned Williams, the San Francisco pilot and Peter Prokup, the mechanic, both looked back, laughing heartily. Below was a herd of cattle throwing dignity to the winds and with tails out and heads down charging wildly across the field. The sun was shining brightly and the plane, with a playful dive, stampeded the herd. "Cheer up, the sun is shining," shouted Williams above the roar of the motors. "See Argentina first."

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Half an hour of sunshine and then rain again. At 11:30 a. m. the big squares of cultivated fields and grazing herds were left behind and we slowly started to climb the bare and scrubby foothills of the Andes. Scattered haciendas appeared and then solid vineyards of grapes along the tree-lined roads. Mendoza was below. A charge into the wind and then down on the rain-swept field at 1:45 p. m. It was the fastest trip made from Buenos Aires. The time was less than five hours for the 360 miles over a road which 100 years ago horsemen in relays, leaving their spent, spurred and dying mounts along the trail, occasionally did in seven days.

Toward the west, the Uspallata pass was hidden in clouds. A message from the All-American cable office at Lascuevas brought from the relay station told of a storm raging there 17,000 feet above the sea with the thermometer showing 38 degrees below zero.

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"Bueno," agreed the lone policeman carrying a rifle, who had stood on the field guarding the plane through the night, a symbol of Argentina's vigilance over the mail.

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Beacon Towers 12,650 Feet

Once in the pass the big plane bucked and bumped in the wind like an ocean leviathan in a storm, but the ceiling of clouds had gone and there was a clear wild below to where the precipitous railway was starting. The peaks above the valley were covered with perpetual snow and below

WOODS FLYING WITH THE MAIL



Map with unbroken line showing territory already covered by Junius B. Wood of The Chicago Daily News foreign service. The broken line indicates territory he will fly over in mail plane.

In a couple of days from now the letters which we carried over the Andes will be aboard another plane skimming over the ocean around the equator, with a perspiring pilot in his shirtsleeves and linen trousers. Just now my head is aching. Lights are dancing in front of my eyes and I have a desire to sleep instead of looking out of the windows. These feelings with a shortage of breath caused by the abnormal altitude discourage romancing over the scenic variety which comes to the air mail traveler. Solitary and in the vast space without a sign of life, the big plane was buffeted by the winds and seemed merely a sparrow in a gale, and every plunge and dive appeared to be a tumble with death. This must seem to be a tremendous effort for the thirty-four pounds of mail which we are carrying from Buenos Aires. The service, however, must start. When the saving of time is considered, it seems to be worth while.

French Plane Passes

Then off to our left into the sun flashed a French mail plane going east. This was the one thing real in the myriad spots twinkling before our eyes.

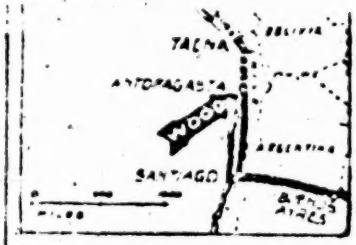
During the California gold rush a shipload of Frenchmen walked from Buenos Aires to Santiago. It took them three months. A few years ago, with good luck, one might cross the Andes by rail in eight days. Then the railroad dug a tunnel and when there are no snow blockades trains get over in twelve hours. But this Sunday morning the French and American planes slid past each other on the airway 20,000 feet up across the Andes in one or two hours, each having the mail to its own country on different continents on opposite sides of the Atlantic in nine days.

"We have passed through the worst," the pilot shouted. It is 10:15 and the altitude is still 20,700 feet. Two minutes later it is 20,000 feet, three minutes more it is 15,000 feet, two minutes more it is 12,000 feet. Santiago is in view ahead under clouds. At 10:23 we are bumping across the field with our ears cracking as if machine guns as we try to get back to normal. Our heads are [illegible] from what seemed to be a [illegible]. Other thrills seem only pin pricks as compared with such a flight while the plane which brought me takes the United States mail to Santiago, whence it continues to Buenos Aires.

The government of Chile had kindly given me special permission to travel on the plane as a passenger.

Wisconsin Man New Pilot

Robert Reste of Wannakee, Wis., is the new pilot who will continue to Lima, 1,750 miles away, on the longest aviation run in the world. The mail exchange having been made, and the last greetings having been said, the third plane on which I have been a passenger in a day left the ground. It bumped and bucked in a cross wind sweeping the hilltops and struck across the ocean. After about two hours it came down in spirals onto another well-kept army field after we had made only 586 miles for the day but when the altitude is considered many more. Copiapo was one of the most important towns in Chile before the mines were worked out. It lies in the last green valley we will see for another 1,000 miles. Copiapo has rain only twice a year. Today the sun is shining and dust is blowing. It is a different world from that of the morning in Mendoza where an overcoat was comfortable in the chilly rain.



Map with unbroken line showing territory already covered by James H. Wood of The Chicago Daily News foreign service. The broken line indicates territory he will fly over in mail plane.

[illegible]

[illegible] Pass next to the [illegible] Then [illegible] [illegible] [illegible]

[fol. 4736]

W. R. GRACE AND COMPANY EXHIBIT 31

NEW YORK

September 26, 1930.

DIRECTORS, PAN AMERICAN-GRACE AIRWAYS, INC.

Gentlemen:

I take the opportunity afforded by the second anniversary of the commencement of operations by our Company on the West Coast of South America to give the Directors a brief resume of the operations, to date, and to remark on past and present performance.

The Directors may recall that on September 13, 1928 our operations were inaugurated by a flight of a plane piloted by Mr. Harris from Lima to Talara. Operations between the Canal Zone and Mollendo were commenced on May 17, 1929. Extensions of the route to Santiago, Chile, were made on July 16, 1929. The line was further extended to Buenos Aires on October 12, 1929, and to Montevideo on November 30, 1929.

The Post Office ordered twice-weekly service on July 1, 1930, at the same time cutting the running time two full days between the Canal Zone and Montevideo.

I refresh the Directors' minds with these dates so that they may appreciate the fact that within the space of practically one year Panagra has increased its mileage from 1200 miles per week to 18,000 miles per week. It has also increased its miles flown per day from 170 to 2570.

It was inevitable that such a rapid increase in route and mileage, coupled with the distance from the source of supplies, would entail added responsibilities and increased
[fol. 4737] effort on an already hard-working organization. The necessary additions to that organization could not be made at a moment's notice. Men capable of doing their best work and also of handling themselves diplomatically in Latin America have to be very carefully chosen. They

could not be chosen and sent down beforehand, because of the policy that only a minimum expenditure must be incurred until we were placed on a twice-weekly basis.

It is, therefore, a source of gratification to your management, and I am sure it will be to the Directors, to be able to state that since operations commenced, in spite of high-pressure work throughout the organization, there has been no case of loss of life or limb to passengers and flying personnel, and not even a forced landing from motor failure whilst maintaining almost an unbroken schedule. It would be extremely unjust to attribute this record solely to undeserved good fortune. The men on the ground and in the air who have contributed to this record by unfailing diligence under difficult working conditions, and sometimes inclement weather, in foreign countries, should receive due credit.

It has been called to your management's attention that certain unfavorable reports have been received concerning the appearance of our planes, and an apparent lack of organization throughout our operations.

I have not been favored with a copy of these criticisms, but as far as I am able to determine, only one such was received from an individual who had any previous experience to qualify him as a judge. It is, therefore, impossible to make detailed answer. I know of no operations in any industry that could not be criticized if a person were so [fol. 4738] disposed. I would, therefore, beg the Directors to examine the following illuminating data:

Miles flown Sept. 1928 to May 17, 1929	46,000
" " May 17, 1929 to Dec. 31, 1929	282,100
" " Dec. 31, 1929 to Aug. 31, 1930	440,364
Miles flown weekly since July 1, 1930	18,000
Planes in operation May 17, 1929	5
" " " Dec. 31, 1929	11
" " " Aug. 31, 1930	15
Hours flown per plane per day	1.7
Pilots on Pay-roll Aug. 31, 1930	13

Flying hours per pilot per day		1.97
Motors in operation		25
Motors — Spares		45
Mechanics on Pay roll — Dec. 31, 1929		29
" " Aug. 31, 1930		52
Value of spare parts — Dec. 31, 1929		$ 20,300
" " " June 30, 1930		33,400
" " " July 31, 1930		39,600
Operating Costs per mile flown — 1929		$ 2.20
" " " " — to		
August 31, 1930		$ 1.72
Operating Costs per mile flown — July and August, 1930		$ 1.47
Passenger Revenue — 1928		$ 5,700.
" " 1929		$ 72,500.
" " 1930 (to Aug. 31st)		$ 84,400.

Commenting upon the above data I would respectfully draw the Directors' attention to:—

First: The notable and rapid increase in mileage flown.

Second: Planes have been placed in operation to care for the increase, so that each plane is in the air less than two hours per day.

[fol. 4739]

Third: Pilots have been hired to the extent that each pilot is not required to fly more than 750 hours per year.

Fourth: Motors have been purchased for 80% replacement, and spare parts have been laid down for approximately six months in advance. A substantial increase in the mechanical force has been made. Of the above 52 mechanics, 20 are Americans and experts in shop and line service.

Fifth: Our operating costs, which include Depreciation and Obsolescence, Crash Reserve, etc., have

shown a gradual decrease, commensurate with the additional mileage flown.

Sixth: Our passenger service seems to be giving satisfaction, as in the face of strenuous competition from a competing American Company in Peru, the passenger revenue shows notable increase.

It will be recalled that your management was instructed to exercise the strictest economy in expenditures for operations, and that no large sums for permanent facilities were to be appropriated until the Post Office ordered at least twice-weekly service. This carried with it the obligation to delay the building of hangars and shops until it was definitely known where these could be strategically located. It was, therefore, not until after July 1st, 1930 that the determination of what looked to be a permanent schedule permitted the expenditure for permanent facilities.

A re-allocation of appropriations was immediately asked for. The construction of a hangar at Lima was commenced. This is now ready for occupancy. Other facilities are either completed or in process of completion.

The services of a maintenance engineer were secured—[fol. 4740] Mr. C. C. Cole, late of the Western Air Express. Mr. Cole arrived in Lima the first part of August, 1930, with instructions to report immediately as to what should be done to place our maintenance on a level with that of any successful airline. Mr. Cole's reputation is so high that the Department of Commerce has appointed him to inspect planes for re-license from Talara to Montevideo, and will accept his statements as to the fitness of Panagra planes. Mr. Cole's recommendations will be carefully studied and placed before you for approval.

It is the intention of the management to have the use of the facilities of four overhaul stations along the route—Panair at Cristobal, Panagra at Lima, Curtiss Co. at Santiago, and either Panair or Panagra at Buenos Aires. This latter depending upon the plans for the extension of "Alas" activities. Where necessary Flight Mechanics will accom-

pany the planes, and Ground Mechanics will be located at intermediate points.

It is believed that it will not be necessary to purchase airports in Peru, Chile or the Argentine, but that by arrangements with the Governments and private Companies, the necessary facilities can be more cheaply obtained. I again call the Directors' attention to the anti-monopolistic policies of the large South American countries, and to their evidenced desire to control commercial aviation within their territorial limits by the erection of Government airports at which all commercial aircraft will be ordered to clear. An incident such as the recent invasion of Chile by a revolutionary plane, piloted by American aviators, will strengthen the determination of the Governments to enforce such policies.

[fol.4741] It will undoubtedly be of interest to the Directors to read the latest impressions of travellers over our lines. I, therefore, attach to this report extracts from letters from Mr. C. C. Cole, from Commercial Attache Walter J. Donnelly, and from two other important passengers.

I most respectfully request that the Directors hasten the settlement of the unpaid bills for Panair and Grace services during 1929, and the first eight months of 1930. Our estimated Cash Position at October 1st will be:

Cash in Banks Sept. 25th		$ 222,100.
P. O. accruals including September estimated revenue		280,000.
		$ 502,100.
Unpaid bills including supplies purchased	$ 24,000.	
Appropriated for Chile	87,500.	
Unexpended appropriations	30,000.	141,500.
	Available Cash	$ 360,600.

These figures would seem to show that the Company is entirely solvent. No proper statement of Profit or Loss

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can be made, however, until it is definitely decided what we must pay for supervision by Panair and for W. R. Grace agency fees. If a reasonable figure is established for these services, it will be possible to provide, from current revenue the additional equipment and facilities necessary to insure the continuance of successful operation.

Respectfully,

s/ J. D. MacGregor.
J. D. MacGregor.

GR 363

[fol. 4742] Extract from letter from Commercial Attache Walter J. Donnelly, dated February 10, 1930.

"Bogota.

"Last month I returned from a 7,000 mile airplane tour of the West Coast of South America. It is a real service. In my opinion it is far superior to the Scadta and much more difficult."

Extract from letter from Mr. C. C. Cole, dated August 12, 1930.

"I wish to take this occasion to thank you for the most interesting airplane ride I have ever made. It was also instructive to me. The crew of the plane and the plane were above reproach and did everything possible to make the trip a pleasure. The engines functioned perfectly from start to finish and the time taken to service at the stopping points was a real eye opener to me under the conditions. You are to be congratulated on the operation and I believe it to be the most interesting airplane trip that can be had."

Extract from letter from Mr. John T. Faris, D. D., Editor of the Board of Christian Education of the Presbyterian Church in the U.S.A. dated September 23, 1930.

"On Friday last I returned from South America. I wish to tell you how helpful were your letters, and how wonderful were all the arrangements made for me.

I did not use the plane from Arequipa because of the revolution. It was considered unwise by those who advised me not to go to La Paz and Cuzco. Therefore, I took the plane at Lima, and rode to Cristobal. Later I had the Pan American plane from Cristobal to Puerto Cabello and return.

My contact with your representatives to whom you wrote, and in fact all other representatives of the Airways whom I saw and with whom I rode, was delightful. You certainly have a remarkable organization."

[fol. 4743]

W. R. GRACE AND COMPANY EXHIBIT 32

No. 1.

Airmail October 6th 30.
due NY October 10 30.
Copy Sta Maria Oct.7 30.
due New York Oct.17 30.

Lima, Oct. 7th, 1930.

R. H. Patchin, Esq.,
NEW YORK.

Dear Patchin:

Your No. 2.

I expect to write the Panagra directors shortly regarding what we are doing here. In the meantime you may take my word for it that we are running a real transportation business in Peru along thoroughly sound lines and Trippe and all others concerned have nothing to worry about. Incidentally I think Trippe should lay off this line until he comes down here and sees for himself what is being done and makes any specific constructive suggestions which he may have to offer. At the present time, so far as Peru is concerned, he simply does not know what he is talking about.

I personally saw something of Capt. Wooten on his recent inspection trip here, and his reports, to me at least, are most satisfactory and should leave no basis for misgiving in Washington or in any other quarters. His personal opinion of our service is best shown by the fact that

he is making a personal trip with his wife over our entire line from Santiago to Cristobal, and in a speech at the Canal reported by the newspapers he said:

> "'One of the finest operating airways in the world is in operation between Cristobal and Montevideo,' he declared, in referring to the Panagra system. 'This is largely due to the fact that this company has as its head of operations a man who has a thorough knowledge of aircraft operations.'
>
> "Unless you have made the airtrip down the Pacific Coast of South America you have no real knowledge [fol. 4744] of the countries over which these Panagra planes fly. It is one of the most educational voyages one can take in Latin America."

As a result of my observations I am more than ever convinced that this business if our partners will let us run it in a business-like way, will be a very important success and I think Mr. Iglehart was right when he took the position long ago that if there were any buying or selling to be done we should be the buyer and not the seller. Coupling Trippe's remarks to you and the proposed financing of Panafr I can easily imagine that Trippe would like to get complete ownership of our line to assist in new financing. You may tell him in unequivocal terms that he is not going to get it now or at any other time. While I agree in principle with his theory that neither party should ~~not~~ sell without offering to the other, and told him the day before I sailed that we would not think of doing so, I think the question is academic because we have no intention of selling and I would not consider for a moment entering into any agreement whatsoever on this subject.

From the standpoint of successful operation on the commercial side the one most important thing is for us to get our 3rd trip. The outstanding reason for this, to my mind is as follows: We have more than enough equipment for 2 trips a week but could probably not get along on much less. We could run 3 trips without any materia increase in equipment. One of our biggest expense items is depreciation [fol. 4745] tion and obsolescence. While I believe that our

depreciation figure is an arbitrary one and that we can get more out of our equipment than our estimated life I fear that our obsolescence period of 2 years may not be far wrong. Improvements in flying equipment and the necessity for more speed may very well result in the obsolescence of our equipment at the end of two years or thereabouts, although naturally we hope for a little longer life. But assuming that the foregoing assumptions are correct it follows that the only way we can avail of the excess life of our equipment over and above our depreciation basis is to get in that life within our two year obsolescence period. This, of course, means more extensive use of our equipment. A comparison of our depreciation and obsolescence under the one trip and two trips a week schedules shows this very graphically. With one trip a week our depreciation was running way behind our obsolescence. With two trips a week the two figures are brought much closer together. With three trips a week our depreciation would run ahead of our obsolescence which would mean that we could save any life which our equipment may have in excess of our depreciation basis. Bearing in mind what a tremendous part of our total expenses depreciation is it is unnecessary for me to point out to you what a large amount of money added to profits this means. The same is, of course, true on all our general overhead and capital charges, but I think it worth while to develop this one point principally because my examination of the figures here has made it so impressive.

[fol. 4746] Unless the Chilian situation has been settled by the time I get there or unless I get some new light on the subject after my arrival I shall probably be sending some pretty strong cables on this subject and I hope you will get back on them, and if necessary, draw Mr. Ingleheart into the picture to see that we bring that issue to a conclusion. I do not wish to be overly suspicious but I do not wish our partner to land us in an awkward situation in Chile at the end of our two year period which he can take advantage of to get his East Coast line extended to Buenos Aires or perhaps even to Santiago. After all we are making money in Chile, conditions there are exceptional, and I

he is making a personal trip with his wife over our entire line from Santiago to Cristobal, and in a speech at the Canal reported by the newspapers he said:

> "'One of the finest operating airways in the world is in operation between Cristobal and Montevideo,' he declared, in referring to the Panagra system. 'This is largely due to the fact that this company has as its head of operations a man who has a thorough knowledge of aircraft operations.'
>
> "Unless you have made the airtrip down the Pacific Coast of South America you have no real knowledge [fol. 4744] of the countries over which these Panagra planes fly. It is one of the most educational voyages one can take in Latin America."

As a result of my observations I am more than ever convinced that this business, if our partners will let us run it in a business-like way, will be a very important success and I think Mr. Iglehart was right when he took the position long ago that if there were any buying or selling to be done we should be the buyer and not the seller. Coupling Trippe's remarks to you and the proposed financing of Panair I can easily imagine that Trippe would like to get complete ownership of our line to assist in new financing. You may tell him in unequivocal terms that he is not going to get it now or at any other time. While I agree in principle with his theory that neither party should not sell without offering to the other, and told him the day before I sailed that we would not think of doing so, I think the question is academic because we have no intention of selling and I would not consider for a moment entering into any agreement whatsoever on this subject.

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depreciation figure is an arbitrary one and that we can get more out of our equipment than our estimated life. I feel that our obsolescence period of 2 years may not be far wrong. Improvements in flying equipment and the necessity for more speed may very well result in the obsolescence of our equipment at the end of two years or thereabouts, although naturally we hope for a little longer life. But assuming that the foregoing assumptions are correct it follows that the only way we can avail of the excess life of our equipment over and above our depreciation basis is to get in that life within our two year obsolescence period. This, of course, means more extensive use of our equipment. A comparison of our depreciation and obsolescence under the one trip and two trip a week schedules shows this very graphically. With one trip a week our depreciation was running way behind our obsolescence. With two trips a week the two figures are brought much closer together. With three trips a week our depreciation would run ahead of our obsolescence which would mean that we could save any life which our equipment may have in excess of our depreciation basis. Bearing in mind what a tremendous part of our total expenses depreciation is it is unnecessary for me to point out to you what a large amount of money added to profits this means. The same is, of course, true on all our general overhead and capital charges, but I think it worth while to develop this one point principally because my examination of the figures here has made it so impressive.

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think we can afford to pay even a little too much to get that situation cleared rather than continue to take unreasonable chances. After all we can pay for the Chilian concession out of Chilian profits. The Latecoere situation, as I stated at the last directors' meeting which I attended, makes this matter of increasing importance as I expected that it would. Latecoere have entered Peru, and with conditions as they are here I do not think we are going to be able to stop them. This means that they can make transfer arrangements with the Chilian National Lines in the south and with Scadta or someone else in the north, or even extend their own lines there with the result that we shall only
not have a strong competing line all along this Coast but Chile's interest in us as the only international line to the
[fol. 4747] United States will be very measurably diminished.

As Cogswell's Nos. 2 and 3 seems to call for no special reply I would suggest that you show him this letter for his guidance. It might also be well to show it to Mr. Iglehart and our other associates at 7 Hanover Square, thereby making it unnecessary for me to write them separately on this subject.

Your truly,

(*Sgd*) HAROLD J. ROSS

HJR t.

[fol. 4748]

W. R. GRACE AND COMPANY EXHIBIT 33

moradas 117 to Lima. 7.27.29.

1 117: following is strictly private
2 we have received
3 confidential information from
4 metzner who
5 states source
6 cannot be revealed
7 that chilian minister
8 colombia at the

9 request of scadta
10 has requested
11 chilian government name
12 official representative
13 to attend
14 conference in Lima
15 in august in conjunction with
16 scadta faucett
17 and lloyd
18 boliviano to
19 make arrangement-s transfer
20 mail at
21 arica to chile
22 aereo authorities
23 from colombia
24 ecuador bolivia
25 and vice versa
26 independent of
27 pan american grace airways inc. sentence ends
28 scadta assuring
29 difficulties with
30 peru already
31 overcome sentence ends
32 chilian government have
33 named director
34 of aviation as
35 delegate and
36 requesting peru
37 permit him to
38 fly to lima
39 sentence ends this
40 shows combination
41 between chilian government
42 curtiss aero co and
43 companies named
44 to try to
45 stop progress
46 of pan american grace airways inc.
[fol. 4749]
47 QUOTATION ENDS following from us to you

48 discuss confidentially
49 with Harris
50 and cable us
51 your ideas message ends

Mr Cogswell.

[fol. 4750]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

DOCUMENTS

WRG 34 thru WRG 72

[fol. 4751]

W. R. GRACE AND COMPANY EXHIBIT 34

W. R. GRACE & CO.
NEW YORK

New York, July 30th, 1929.

Assistant Secretary White of State Department advised R.H.P. by telephone today, that Ambassador Culbertson at Santiago had reported that proposed meeting at Lima is a part of plan among The Scadta, Faucett, Lloyd Boliviano and Chilean Military Service directed against Pan American and that the New York, Rio and Buenos Aires working

with Latecoere and the Curtiss interests working through Faucett are parties to.

The Ambassador says that the Chilean Government is more liberally inclined towards company in Chile which merely undertake to deliver mail and passengers to particular points than Pan American hence his recommendation for cooperation between Pan American and Chilean Lines.

[fol. 4752]

W. R. Grace and Company Exhibit 35

Chieftain 152 from METZNER (Santiago) 7.10.29

1 152: We have,
2 learned through
3 reliable sources Trimotor
4 Airplane company
5 have secured mail contracts
6 with Uruguay
7 and Argentina
8 to New York they are represented
9 in Buenos Aires
10 by Bunge
11 and
12 Savala
13 who are (in) treaty with
14 Chilean government for
15 similar mail contracts
16 they state
17 service inaugurated
18 by first
19 airplane Washington (D.C.)
20 already arrived
21 Rio de Janeiro Chilean government
22 are evidently
23 ready to sign
24 similar mail contracts
25 as Argentina
26 and Uruguay
27 provided certificates

produced that
Trimotor Company
working in conjunction with
Latecoere Company
stop We are
confidentially informed Trimotor
not an American
Company and that
United States Government not disposed to
grant mail contract-s
for the United States we have been
informed that party
at back
of Trimotor
is Royal Mail Steam Packet Co.
foregoing for your information.

Mr. Roig
Mr. Cogswell

[fol. 4753]

W. R. Grace and Company Exhibit 36

[Handwritten notation—Map of Bol enclosed]
[Mr. Zalles \ ~~Mr. Roig~~ ~~Mr. Patchin~~ P.—Mr. Cogswell]

W. R. Grace & Co.
La Paz

PRIVATE LETTER #4387

LA PAZ, 15th August 1929.

Messrs. W. R. Grace & Co.,
NEW YORK.

Sep 3 1929

Dear Sirs;

PAN-AMERICAN GRACE AIRWAYS INC.,
LLOYD AEREO BOLIVIANO.

We confirm our private letter #4371 of the 8th inst, and we beg to advise you that, according to verbal information, the renewed activities of the Lloyd consisted in

their having applied for a permit from the Chilean Government to land their planes in Chilean territory. The reply was evasive and ambiguous, to the effect that there would be no objection, provided that the Bolivian Government would allow the Chilean planes to land in their country. It further transpired that deputy Peña, a brother of one of the members of the Directorate of the Lloyd, intends to present a protest to the Congress, asking to grant to the Lloyd exclusive rights for international postal service.

Both Mr. Rocca, Postmaster General, and Mr. Flores official Mayor, of the Communication Department are of the opinion that it is entirely out of the question that the Bolivian Government will even consider the idea of allowing Chilean planes to land here, and that the entire plan of the Lloyd is impracticable.

We cannot of course vouch for the aforementioned information, but it shows that the Lloyd is active and anxious to exercise a monopoly in this country. There are also aware that our exclusive option expires in 3 months, and Mr. Kyllmann is continually inquiring what news we have of the expected arrival of Mr. MacGregor, or of another representative of the Company.

We enclose herewith a map of Bolivia, which may be of interest to you. You will notice that besides the established air lines, amongst the projected ones marked therein, are those which are covered by our option.

We shall be pleased to receive further news from you, and remain,

Yours very truly,

p.p. W. R. Grace & Co.,
/ / (Signature illegible)

Enclosure.
JL/l.

[fol. 4754]

W. R. Grace and Company Exhibit 37

zallchart 49 from LAPAZ. 12.4.29

1 49: your 50.
in the event proposition outlined panagra
No 9 unsuitable it is of utmost impor-
tance that door be left open for us to
operate across bolivia especially to bue-
nosaires and that no other company be
given monopoly this route

2 LLOYD using
3 strong influence
4 in congress
5 in order to obtain exclusive
6 monopoly bolivia
7 we on our part
8 likewise working
9 hard cross
10 proceeding-s LLOYD
11 but doubt if
12 we shall be successful
13 sentence ends consider it essential
14 United States government interfere
15 through diplomatic
16 channels to arrive
17 at international
18 convention air
19 way service between
20 United States and
21 Bolivia,

Mr. Cogswell.

[fol. 4755]

W. R. Grace and Company Exhibit 38

(Western Union Telegram Form)

CB10 23 COLLECT—U WASHINGTON DC 6 1236P
H J ROIG, W R GRACE AND CO—

STATE SAYS WILL INSTRUCT LAPAZ TODAY TO MAKE REPRESENTATIONS AGAINST ANY MONOPOLY TENEING RESTRICT OPPORTUNITY AMERICAN COMPANY THEY ARE STUDYING TREATY SUGGESTION—

R H PATCHIN

103P

[Stamp—Collect—Dec—6 1929.]

[fol. 4756]

W. R. Grace and Company Exhibit 39

W. R. GRACE & CO.
NEW YORK

Letter No. 5

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

New York, October 15, 1930.

KENNETH C. HAWKINS

Dear Roig:—

George Barr Baker who, as you know, accompanied Mr. Hoover as publicity secretary on his trip around South America, recently introduced to me Kenneth C Hawkins, late operations manager of the northern division (New York to Para) of Nyrba and who has been let out as a result of the merger. He wants to be located and I passed him along to MacGregor with whom he is to have some

further conversation but I do not understand that there is, at the moment, any vacancy in which his services can be utilized.

I am not pressing him on MacGregor but I am impressed by the unusual background of aviation and radio experience which he claims to have as indicated by the following record:

Graduate of Annapolis, 1919, standing 96 in class of 524.
7 months naval transport service.
Chief Engineer of a destroyer for two years.
Attended U.S. Naval Destroyer Engineering School, Sperry Gyro Compass School, Submarine School.
Served in Submarines for two years; as chief engineer for one year and Commanding Officer for one year.
Attended Naval Aviation School and was rated as a pilot in 1923.
Served on U. S. S. Nevada with the aircraft squadron of the battle fleet.
Had two years' service with seaplanes and for six months was communication officer on the staff of Admiral Reeves, commanding the aircraft squadron of the battle fleet.
For two years, 1926-8, was communications officer of the naval air station of San Deigo, Calif., in Nov. 1928 went to U. S. S. Maryland as aviation officer and commandered that vessel with Hoover on cruise around South America.

Mr. Hawkins resigned and joined Nyrba as pilot, flew their second Sikorsky from Tampa to Buenos Aires and was finally appointed Operations Manager of their northern division.

Hawkins claims to have extensive experience in operation and construction of radio. He says efficient sets can be manufactured much cheaper than the prices quoted by R.C.A. and that patent infringement suits need not be [fol. 4757] feared as R.C.A. stated at the Radio Conference in Washington, last fall, that they would not interfere with any aviation company in the foreign field which built its

own sets. I am checking up on this as it seems a very broad statement.

Anyway, Hawkins seems to have a lot of radio and practical aviation experience and he might be just the man to take into Panagra in some executive capacity, *not necessarily as a radio engineer*, but with the idea that he could develop the possibility of equipping the planes with simple radio installation and to work with the ground stations already existing. It seems to me that it ought to be possible to get service from the governmental ground stations in Peru and Chile cheaper than putting in our own ground equipment at heavy expense.

I am sending you Hawkins' record for your information but I have told him simply that he would have to sell himself to MacGregor and Harris.

Webster, whom I encountered on the street last week said he understood the Chilean aviation Administrate has a very ambitious program of government airports which it is hopeful of getting financed in the United States. I should think the chance of this was pretty slim at this time.

Have just received and read with the greatest interest, your letter No. 1 and I am delighted with the good report of the service. I am writing Rebstock to send me the original newspaper clipping quoting Wooten's endorsement of Panagra. I will have it photostated and placed where it will do the most good.

I fully realize all you say about the importance of the third trip and will work steadily towards that end but I am bound to say that I consider the chance slender at least for the next fiscal year.

It seems to me that the penetration of our foreign competitors must have a powerful motive for the extreme extensions recently made are so remote from their genuine commercial interests.

[fol. 4758] I am very glad you are now in Santiago and we are looking for important cables from you at any mo-

nent. Sommers has just cabled PanAir suggesting that we propose to Chile and Argentina that inasmuch as the Brazilian revolution has impaired the service and carriage of air mail from Chile, Argentine and Uruguay to Europe that we bring all the air mail for Europe to New York for despatch by the fastest trans-Atlantic steamers. This seems a good idea and we may be cabling Santiago later in the day about it.

I have shown your letter #1 to Mr. Iglehart and all others concerned.

Wall Street has been misbehaving. After the Prince & Whitely failure, several houses have been quietly salvaged by the banks. Common report says among them were Pynchon & Co. and Otis & Co. In commercial lines there is some indication of improvement but I think it is retarded by the bad picture in the stock market.

Faithfully yours,

/s/ R. H. Patchin

[fol. 4759]

W. R. Grace and Company Exhibit 40

No. 3.

SANTIAGO, 24th October, 1930.

R. H. Patchin Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Patchin,

Your Nos. 4 and 5:

So far as our foreign competition is concerned I believe that it is based upon a political motive; Deering told me in Lima that he believed that it was a part of the French idea of Latin consolidarity in preparation for the next war, and I dare say he is correct. Whether he is or not, however, and whatever the motive may be, the competition is a very substantial fact.

As soon as Rihl arrives next week I hope we can make some substantial progress in clearing up our Chilean situation. I believe that the present moment is a favourable one, and that with fair cooperation from New York we ought to be able to get in substance everything we want, except radio ground stations, but we will have to be given a little latitude in the matter of detail, and not have too much insistence on the exact manner in which everything we want is formulated. On this whole subject I refer you to my letter to Cogswell of October 20th. So far as the radio ground stations are concerned, I not only feel that we cannot get them, but personally I am not interested in pressing the point. If we get permission to instal them it is very likely to be in some form requiring us to instal them within a fixed time, and perhaps in accordance with Chilean Government specifications and regulations, which may not suit us. Moreover I see no reason why we should incur this capital expenditure so long as we can use Government ground stations; even though our use of Government ground stations is bound to be subject to certain regulations which may at times be a little irksome; I believe that even if we had our own stations, they would be subject to quite similar regulations.

The point which Hawkins mentions that plane sets can be constructed economically is of very great interest. I should suppose that this might be the case, as if it were otherwise I do not believe Panair would have developed their sets. I think you should follow up this idea very closely, because, in Chile at least, radio is I am afraid going to become more and more a necessity. In Peru,* where flying conditions are much easier on account of more natural landing fields and better weather, it is not so pressing, but at this end of the line we must have it in the not too distant future, especially if we get into the passenger business. It is apparently the only practical thing over the Andes. Radio beacons and beams, while of some value where it is possible to fly in a straight line, are of little value over the Andes, where owing to weather conditions it is repeatedly [fol. 4760] necessary to divert from such a line.

---

* (except Arica/Arequipa) and Northern Chile

I would like to reemphasize what I said in my letter of October 14th about free passengers, and carrying of any passengers where we are not regularly in the passenger business. On the latter point it has come to my attention that the letters which we give people taking them into our service in order to be in a position to carry them at all, lead to frequent misunderstanding. The holders of these letters, innocently or otherwise, seem to take them rather seriously, telling people both in the "Panagra" and Grace organization and outside that they are connected with our Company. This results in our own people talking to them far more intimately than there is any occasion for doing, and the holders of the letters, or at least some of them, seem to be entirely without shame in the matter of asking questions about the most private details of our business. As many of the pilots and some others enjoy talking freely and seem to delight in making a display of their knowledge about everything they know, or think they know, this is at any time likely to have disagreeable consequences. So far as the newspaper and publicity men are concerned, I have still to find anyone along the coast who considers their publicity of any value here, and personally I think it is of infinitesimal value in the United States, the more so since all their stories are bound to be coloured with the spirit of adventure. Commercial aviation has no interest in adventure, and that kind of publicity creates just the opposite of the impression which we must build up, which is to the effect that transportation by air is a regular established means of transportation, no different from any other except that it is quicker and more comfortable.

So far as our equipment, operations and maintenance at this end of the line are concerned, I prefer not to go into details until I have been able to devote a little more time to the problem. Even then I may not do much writing on the subject, as by the time I have reached my conclusions I shall probably be heading North anyhow and can discuss the whole question more fully upon my arrival. In the meantime, however, any matters which I can agree upon with Harris I shall endeavour to quietly put into force on the ground without making them matters of state by cables

and letters. I will say, however, that before undertaking passenger business over the Andes we must give that problem a good deal closer study than it has yet received. Unless the Falcon proves the exception of the rule, as I trust it will, the advice we have received from our partners on this problem, which ought to be one where they would be particularly helpful, has been pitiful to a degree. Such progress as we have made has been due entirely to our own personnel, and in spite of expensive errors of our associates, we shall have to go along the same lines. My idea is that C. C. Cole will have to spend a protracted period in this Division, that he should certainly be here all through next winter to become thoroughly familiar with the actual conditions, and if possible that Harris should also spend a good bit of time here, particularly next winter. It is most unfortunate that this was not done during the winter just closing. This will, of course, be expensive, but I see no way of avoiding it.

[fol. 4701] While Hawkins has certainly had some very interesting experience I do not quite see where we can use him at the moment, as with the two Coles I think we have sufficient high category technical assistants for the time being. The weakness in his record seems, of course, the fact that he has had so little commercial experience, and that with a company where most of what he has learnt will probably have to be forgotten before he becomes of much use to us.

With kindest regards, I am,

Very sincerely yours,

HJR FL.

P.S. Please number my unnumbered letter to you as follows:—

October 4th—No. 1.
" 14th—No. 2.

[fol. 4762]

W. R. GRACE AND COMPANY EXHIBIT 41

Letter No 70

(HJR trip series)

GRACE y Cia (Chile) S. A.

SANTIAGO

Airmail 5.9.35
NY 5.15.35

[Handwritten notation—Copy to—Mr. Garrú \ ~~Mr. Patchin~~ P.—Mr. Cogswell \ —Mr. Campbell \ ]

(Stamp—May 15 1935—Ansd 5/21/35)

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Santiago, May 6, 1935.

D. S. Iglehart, Esquire,
New York.

Dear Mr. Iglehart,

WASHINGTON

I have read with the greatest interest your No 36 and enclosures on this subject. It seems to me that our case was very well presented and that the concession, since we had to make it, was made as gracefully as possible. From your letter as well as from what Vidal tells me there seems to have been no escape from this bitter pill.

I note from your letter that you are proposing to draw Clark into the picture and have no doubt that being in the same firm with Root this will help to insure so far as possible a united form of representation. In spite of all its difficulties I still feel that this is desirable so long as at all possible for I am worried lest, with one partner proposing one form of cut and the other another form, the Post Office will simply adopt both suggestions. In this connection I am, of course, particularly concerned about the Montevideo run and hope it may be possible to present a united front on

this point. There are now 3 trips there which the Post Office may consider too many. Obviously we having been there first, the Pan American stop is the one which should be discontinued. Moreover, Trippe ought to be willing to discontinue it, for, since he is paid mileage from Buenos Aires to Rio in any case, the call at Montevideo means little if any additional mileage for him and the efficiency of his service would be improved by omitting this call, because, once they have a one-day schedule between Buenos Aires and Rio they will have a full day's flying to do and they can well afford to conserve the half hour or so of daylight required for this Montevideo stop. The difficulty, of course, from the P.O. standpoint in omitting the Panair stop is that it will not really save them any money for even though the [fol. 4763] rate is higher the omission of their stop would save little or no mileage between Rio and Buenos Aires and the only way to make a real saving in their case is to make Montevideo their terminal, which is hardly logical. I am concerned, therefore, lest the Post Office cut off one of our trips which would be almost as bad as losing both for the expense of maintaining an amphibian and crew to make one trip would be about as great as for two trips.

A very important consideration in connection with this service is the fact that it has cost us a great deal of money and effort to secure our flying rights and establish ourselves in the Argentine and Uruguay. The cost to the Post Office in maintaining the present service to Montevideo under which they are in effect paying for only two trips a week in any case, is a trivial amount compared to the importance of maintaining the foothold which has been secured. This is particularly true in the Argentine and Uruguay where the United States occupies a distinctly inferior position. Anything such as this American air service which helps to improve this position ought to be maintained and extended rather than restricted. The rights to maintain these services were not secured without difficulty. If they are thrown away now it may not be possible to secure them again later.

I wish the men who are passing on this question in Washington could see what our Line is doing today and appreciate what it has meant to reach this point. — could have just a

faint realization of the struggle and the problems involved in the establishment of these United States air lines in these countries over-seas. Nothing in domestic aviation development compares with it either in cost of attainment or importance of the result. The job is far from finished. Continued effort and expense along the lines of the past will [fol. 4764] be necessary to hold our present position and steadily advance it. We have built up a standing and good will in these countries which is of the greatest value. But it can readily be lost. The cancellation of United States domestic airmail contracts undoubtedly had an unsettling effect and I am constantly asked about the attitude of our Government toward the foreign airmail. We cannot expect goodwill abroad if it appears that we do not enjoy it at home.

After all, we are still a foreign line in these countries and our relationship with them on which our whole development must depend can only be maintained if it is based on a clear mutuality of interest which must consist, not only of providing continually better international service, but development of local services and cooperation with local interests. The program of development and expansion on which we are embarked, including the Bolivian extension, local services by Aerovias in Peru, better equipment, faster schedules, improved airports (notably the very constructive air port program we are working out in cooperation with the Peruvian Government) and lighting in cooperation with the Chilean Government, will serve to strengthen and solidify this position and to build American aviation into the life of the countries along our Line in a manner which will be of inestimable value to them and a definite contribution toward solidifying relations between them and the United States. A narrow view with regard to these collateral developments will be utterly destructive of any real American aviation progress abroad.

It may perhaps be said that from the standpoint of foreign Government relations, equipment and operations we have completed a pioneering stage or at least a definite phase of it. Our present program of expansion and improvement represents, in a sense, a secondary stage of [fol. 4765] development which is only made possible by the

conservation of the experience and resources of the earlier period. The fact that we have proceeded cautiously, avoiding waste and building up reserves by a policy of conservatism during the first period in which we have been acquiring our experience, should not be used as a reason for penalizing us by a reduction of mail pay now based upon figures which chance to exist at what is really merely a moment of transition from one period of development to another.

The phase upon which we are now entering will be no less free of problems than the past and no less expensive perhaps substantially more so. Some idea of what we have had to face to date in the way of equipment alone may be had if we just stop to think that four years ago we were operating with Fairchilds and just going to Fords. Already the Fords are replaced with Douglases, three sets of equipment in five years. And there is no reason to believe that future progress will be less rapid. On the commercial side we are still very much in the pioneering stage. Increase of mail, express and passenger revenue, while encouraging, is still very much short of enough to make possible the frequency of service which in the case of domestic lines goes so far toward tarrying overhead and capital charges and thereby making reduction in their subsidies possible. Increased Government support to the Chilean Line and to Air France (see clipping enclosed) and extension of Lufthansa activities to this Coast at the instigation of the German Government, give some indication of what we may expect in the way of increased competition. With the increase in Japanese influences here and Trans-Pacific flying now a reality, the possibility of developments in that direction are not to be ignored. Now, halfway across the stream, is certainly not the time for the United States [fol. 4702] Government to reduce its support of their airlines in these countries. If the authorities in Washington could but feel the pulse of this development and but sense its far-reaching importance on the ground, I am confident that their efforts would be directed toward the furthering of this development in every possible way rather than its restriction. I am hopeful that the Post Office Commission now going over the lines may catch the spirit of the situ

ation and be able to transmit it to the Government upon their return to Washington.

NORTHERN EQUIPMENT

I am at a loss to understand Campbell's report that the S-43's would not be available until the first half of next year. All of our recent information has been to the effect that they should be available much sooner. United Aircraft's representative, whom I saw in Lima, was certain that the first ones would be ready by the middle of this year and you will have seen Beatty's letter which I sent to Patchin with my No 69.

I will see what can be done to further the idea of this Colombian survey. I spoke to Trippe about his overland possibility several months ago and Hargis, when in New York, also discussed it with him and prepared a memorandum on the subject which you will find in my files. Trippe put Harris off at the time with the statement that Pan American, Scadta and the Colombian Government might not be agreeable and did not take a copy of his memorandum. This memorandum, by the way, resulted in Harris' receiving a rather strong letter from MacGregor (Miss Boucher can give you copy of this letter from my files) which may lead him to be rather cautious about embarking again on this terrain.

I have recently heard that with the close of the Winter season to the West Indies, Panair have a number of Com- [fol. 4767] modores laid up at Miami. If so this ought to make this equipment available for us at least during the Summer.

CONDOR

I of course saw Mr. Fritz Hammer when he was here but, as he did not seem to be particularly communicative, it occurred to me that it might be a good id a to get Koch in touch with him as they were at least semi-compatriots and could talk things over together in German. I accordingly asked Koch to have a talk with him which he did on Satur-

[Handwritten notation in margin near second full paragraph 4th line: "will be sent out tomorrow"; also near 10th line is word "attached."]

day and the result was the very important information which I passed to you in my cable No 33. I am very hopeful that this may give us the key to the situation and that we may be able to work out some arrangement along the lines indicated which will enable Condor to meet their problem without coming to this Coast. If they come here I do not see how it can possibly cost us less than $50,000. per year and a good deal more if we become embarked on rate wars and other retaliatory practices. The whole promising business we have built up between here and Buenos Aires will be seriously injured. Unless you have other ideas, in which case I would be glad if you would cable me, my plan would be in the first place to spare no effort to endeavor to work out some arrangement for giving them the West Coast European mail at Buenos Aires if this will result in their withdrawing their contemplated service to Santiago, or, failing this, endeavor to come to some satisfactory traffic agreement with them designed to minimize the loss to us as far as possible. If there seems to be any promise of a reasonable agreement along these lines, I would prefer to make it at the outset because we would probably come to it in the end and I would like, if possible, to avoid a preliminary period of ruinous competition at heavy loss.

Very truly yours,

/s Roberne

[Ex. 4768]

W. R. Grace and Company Exhibit 42

April
Second
1930.

Richard F. Hoyt Esq.,
c/o Hayden, Stone & Co.,
25 Broad Street,
New York City.

Dear Mr. Hoyt:—

In my opinion the most important thing now effecting Pan American Grace Airways Inc. is the appropriation

necessary to increase the service to two trips a week. The President has recommended that this be done as indicated by his attached message to the Senate.

The Senate Appropriations Committee has included the proposed increase in the Bill.

Understand Nyrba is doing everything possible to get this appropriation earmarked for the East Coast.

Very truly yours,

[fol. 4769]

W. R. Grace and Company Exhibit 43

April
Fourth
1930.

George Akerson Esq.,
Secretary to the President,
The White House,
Washington, D.C.

Dear Mr. Akerson:—

You may recall that by your arrangement the President received me a short time ago to speak about the South American airways situation.

I will greatly appreciate it if you will bring to his attention the attached letter and enclosures dealing with the same subject.

I would not, of course, claim his attention for it if I did not feel it was pertinent to his very keen interest in the matter.

With kindest regards, I am,

Faithfully yours,

Patchin

[fol. 4770]

W. R. Grace and Company Exhibit 44

April 4, 1930.

The President,
The White House,
Washington, D.C.

My dear Mr. President:—

Since you were good enough to permit me recently to bring to your attention certain facts regarding South American air mail, may I submit the attached data showing how the three principal air mail routes by which the Post Office Department is now forwarding air mail via Central America and the West Coast of South America to Argentina and Uruguay on the East Coast, serve seventy percent of our total commerce with Latin America.

These three routes directly serve fifteen of the twenty-one Republics. Bolivia and Paraguay are indirectly served. The only country with large commerce left out is Brazil and it can be reached by a short additional route from Montevideo to Rio.

This demonstrates, I think, that the Post Office Department by creating this through trunk line is providing the greatest possible service at the least possible expense. Eighty-five percent of the total United States investment in Latin America is in countries along these three routes.

Pan American Airways Inc. and Pan American Grace Airways Inc. have just submitted to the Post Office a new schedule whereby the schedule from the United States to Buenos Aires and Montevideo will be greatly reduced. As previously explained to you greater frequency of service is indispensable to the operation.

Respectfully,

Patchin

Encl (1)

[fol. 4771]

W. R. Grace and Company Exhibit 45

April 12, 1930.

W. Irving Glover Esq.,
Second Assistant Postmaster General,
Post Office Department,
Washington, D.C.

Dear Mr. Glover:—

I notice that the Senate passed the P. O. Appropriation Bill with increase and appropriation for air mail.

I gave Chairman Wood of the House Appropriation Committee a copy of the memorandum which I recently left with you showing the distribution of United States investment along the three routes, 5, 8 and 9, which form the trunk line from the United States via Central America and the West Coast of South America to Buenos Aires and Montevideo. This clearly shows that the Post Office is serving our most important political relationships, the largest number of countries, the largest commerce and the largest investment of United States capital by the least possible mileage. Although the population figures are not contained in my memo, it is a fact that more population is served by these three connecting routes than could be reached in any other way.

Some confusion is caused by the habit of referring to Route #9 as a *West Coast* service. This leads many people to think that it is exclusively on the West Coast whereas, in fact, the great River Plate market is its terminal and perhaps its most important section.

Very truly yours,

Patchin

[fol. 4772]

W. R. Grace and Company Exhibit 46

SANTIAGO, 20th October, 1930.

W. F. Cogswell Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Bill,

Chilean Situation

Your Nos. 5 and 6:

When it is suggested that we are paying a "shocking amount" for this concession, and that we should be "hard-boiled" and withdraw our offers by a fixed date unless our terms are accepted, you can probably not imagine how strange these ideas sound at this end. Such ideas overlook, in the first place, the fact that we are dealing with military authorities, who regard the whole subject of aviation as one of national policy and not to be treated as a commercial matter in any sense; Valverde can explain what this means better than I can. You are also assuming that the original decree 2001 has already been whittled away, and that its original terms requiring lighted airways throughout the entire length of Chile have long since been abandoned, and it is simply a question of the Government accepting what we are willing to offer or get nothing. This again is a wholely erroneous conception. As matters now stand the terms of 2001 are still in force, and will be in force when our two years are up, unless in the meantime they have been modified by *mutual* agreement. To date no such agreement has been reached on any point, and if we permit the two years to run off without reaching such agreement we will be forced at the end of the two years into a purely diplomatic battle, which, even should it result in better terms (personally I cannot conceive of its doing so) than we can now arrange, in my opinion bad will with the local authorities which will result from such a situation will cause us in the long run many times the amount which we are now con-

sidering paying; I am not alone in this opinion. Bear in mind too that we are the only foreign company commissioned to fly throughout the length of Chile, and the local authorities here do not regard that as an insignificant privilege by any manner of means. Latecoere have had to pay much more, for which they have received less, and so NYRBA would have had to do, had they continued. I would far rather pay the amount we are talking about than have to expend the amount which Latecoere did in developing an airport which is 25 miles out of town, and which they are not permitted to use except for storage and repairs. The idea, therefore, of standing out on impossible terms in the hope of getting better is simply forcing us inevitably into what would be an extremely awkward position at the [fol. 4773] end of the two year period, which is very near at hand. In my opinion if we let things go to the last minute, we are sure to have a most difficult situation on our hands, which in grief and bad feeling will give us more than the amount we are now talking about, even in the remote possibility of our being able at that time to reduce that amount in the first instance. If we are to be forced into this position I feel that the responsibility for it and for getting us out of it when the time comes must be put up very squarely to the Pan American.

It is because of the above that I am very glad Mr. Rihl is coming over, for I believe that once he sees the situation at close range and gets the feeling of it, which it is impossible to convey by correspondence, he will agree with me that we should avail of our present opportunity (if it is not lost by that time) to get this matter closed up, removing this long standing bone of contention between us and the authorities, working with them on a friendly basis, and relying upon the development of mutual understanding and confidence to work out the balance of our problems. I shall, of course, have to rely on you and Patchin to get the other Directors in line should Rihl agree with me to any extent, because I realize the strong likelihood that, even if he does, that will not be the end of the matter. If that point is reached it may be necessary to ask Mr. Iglehart to take up the matter with Mr. Hoyt. If Rihl does not agree with me, or if he does but his principals fail to back him up, I

confess I shall be at the end of my rope with nothing to suggest, except that Trippe responds for the responsibility which he has assumed by coming down here and handling the matter himself. While it is always possible that some miracle might come to pass which would enable him to make a far better arrangement than anything which is now possible, my mind is very clear that we should settle the matter up in the light of facts as they now exist, and not wait for some supernatural condition to come to our assistance.

It is somewhat difficult to keep the matter open now that I am here, but I am going off to Concepcion today, which will leave a little time, and in the meantime I have left a memorandum with Mr. Dagnino, as per copy enclosed.

I trust that you have already written us replying fully to Mr. Dagnino's letter to Mr. Valverde No. 15032, because if you have any comments on any of the specific language in the proposed form of decree sent you with that letter we ought to have them promptly.

Yours sincerely,

P.S. "Ley y Reglamento de Aeronavegación" 1930, of which you have a copy, gives a good idea of the general view here towards the whole subject of aviation. Articles 11 and 12 on page 28 are of interest on the question of Radio.

[fol. 4774]

W. R. Grace and Company Exhibit 47

December 5, 1930

Substance of Telephone Message Received at 11:30 A.M. to-day from Mr. Roig in Santiago, Chile—

The Minister this morning signed a decree which was being sent to the President for signature (President leaving this afternoon). Roig was able to intercept the decree before it got to the President, and this is what the decree contained.

In the first place the Minister advised that this was not a decision of the Aviation Department but that it had been taken up fully by the Cabinet and it was the decision of the Chilean Government. He stated that they had a definite policy with reference to Aviation that was of a permanent character, and that there was a limit to which they were willing to go in granting concessions to foreigners flying in the country. That the Chilean Government proposed to maintain its sovereignty in the granting of these concessions and he indicated that this decree represented the limit to which they would go in granting a concession to us.

First: They entirely omitted the most favored nation clause. Roig says that as this was entirely omitted that it leaves open for discussion any condition that might arise, and he thinks there is no objection to omitting it. He says he is not sure that the Ambassador feels just as he does about it, but he thinks that if the Ambassador did object to this point it would be the only one to which he would raise any serious objection. He feels, however, that we should convince the Ambassador to agree to this.

[fol. 4775] Second: The clause with reference to flying with single motor planes has been reworded to state that in the transport of passengers, planes preferably of two or more motors should be used, but that if single motor planes are used they should be of at least four hundred horse power. A further clause was added stating that precautions should be taken for sufficient security to passengers and assurance of arrival on time, etc. This is merely a general clause and has no particular importance.

Third,
Cabotaje: It is specified that no rights should be granted for Cabotaje, but in spite of this fact in occasional cases where Cabotaje might be carried on, previous consent of the Government must be gotten and the charge for obtaining this will be agreed upon, but it will be not less than 50% of the passengers. Roig explained that the Government's contention is that we have been carrying a lot of free passengers and that this has interfered with the Government service, and their feeling is that we ought to abandon the idea of carrying Cabotaje passengers at all.

Fourth: There is a general provision that a clause specifying that flying has to be done in accordance with rules and regulations of the Aviation Laws of Chile.

Fifth: The Force Majeure has been restored in a satisfactory form.

Sixth: For compensation we are to have the option of lighting the two fields within 7 months or paying 500,000 pesos within thirty days.

Seventh: The duration of the concession. The clause represents substantially as follows:

Permission to run for four years from the date of this de- [fol. 4776] cree and extended for another equal time if company has complied with the obligations imposed by this decree, and if the Government "lo estime conveniente". Roig feels that if we go along operating satisfactorily in Chile that at the end of the first four years no one will know that the four years has expired and that we will go along for the succeeding four years without any difficulty whatever. He feels, furthermore, that if we don't go on smoothly and we have serious trouble, that we will have impediments no matter what clause there is in the decree. He feels, however, that if we can get to a definite working agreement with the Government and could abandon discussion as to what basis we are flying on, that we will be able to work up a mutually good faith that would give us more or less permanent rights in the country.

Now the question comes as to what will happen if we refuse to accept this decree. Roig says that the Ambassador has been a party to the whole discussion, that he has been in touch with the Ambassador, has made definite representations to the Minister, and he feels that if we refuse to accept this decree we would either have to try to fire some sort of a diplomatic gun, which, however, he feels would be fired without much enthusiasm or confidence on the part of the Ambassador; the alternative to firing this gun being merely to let matters go along as they are, in which case he is of the opinion, and the Ambassador is also, that our position will become less favorable and that we will eventually be forced to accept a less favorable settlement.

W. R. GRACE AND COMPANY ENGINEERS

W. R. GRACE & CO.
NEW YORK

Letter No. 7

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Airmail—10 20 30
Arr. Sant.—10 26 30
Santa Maria—10 24 30
Arr. Valpo—11 9 30

NEW YORK, October 18th, 1930.

Dear Roig:—

Chile Concession: We were able to get the whole Board together the evening of the receipt of your cable #52 and had a session from six to eight at the office of Panair. All that we were able to accomplish was to get Trippe to agree to send Ribl a cable instructing him to proceed immediately to Santiago. Trippe stated he had talked to him on the phone after receipt of your cable and Ribl had expressed the opinion that he did not consider it advisable to make the proposed payment. Hoyt stated bluntly that it was no use sending Ribl if his mind was already made up on the subject, but Trippe promised he would go there with an open mind and would report on the situation as he now finds it. We, of course, have no real assurance as to what private instructions will be sent him on the subject. During the course of the meeting, our partners went into another room and talked the matter over between themselves for about half an hour. As to their individual attitudes, Trippe, as you know, is strongly opposed to spending any substantial amount, ostensibly because of the principle involved. There is no doubt that if we should [illegible] right to fly through Chile the East Coast [illegible] be materially brightened. Whitney also appears to [illegible] quite decided views on the subject. Hoyt, I believe, [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

European Mail: As the Latecoere service through Brazil has been interrupted, we have taken the matter up with the Post Office here and they have agreed to use every effort to facilitate the despatch from New York of mail coming from South America for Europe via our route. This mail is of considerable quantity and while, of course, we cannot expect to hold all or even a major part of it, after Latecoere resumes service, nevertheless, we should retain part, especially in view of the fact that their service is only once a week. MacGregor was somewhat opposed to pushing this as he is afraid of the volume of mail interfering with our passenger-business, but it seems to me [fol. 4778], that this is a golden opportunity to advertise and strengthen the West Coast route.

Laidlaw: We have arranged with Panair to send Laidlaw from Rio to Buenos Aires and Santiago. As you probably know, he was formerly in the postal service and is an expert in those matters. His salary is only $375. a month and I believe it will be worth many times what it will cost us to have his assistance in putting the handling of the mails on a more satisfactory basis. For example, the weights reported by the Postmaster at the Canal Zone of mails from Argentina and Uruguay are consistently higher than those on which we are collecting from those Governments, and this, of course, represents a loss to us as the United States Post Office collects on the basis of the amount reported from the Zone.

Enclosed herewith copy of letter from MacGregor to Harris in reference to plan to avoid the sections of the Peruvian Airways concession which require that company to place its planes at the disposal of the Government. It seems to me the plan is rather thin, but this is, of course, largely a matter to be decided by the people on the ground. As you know, Panagra as such has no operating rights or concession in Peru. One objection to the scheme is that it would seem to be pretty clearly a subletting under our United States mail contract. If you consider this point serious, I should appreciate your cabling me on the matter.

The report in your letter #1 to Patchin in reference to our operations was most interesting. We will be interested to hear your views as to Chile, although Wooten's speech and the fact that he and the Ambassador are both using our line for their families, it would seem to show that conditions there are equally satisfactory.

While the obsolescence period of two years on our planes may not be far wrong, nevertheless, at the end of that period a plane should in all probability be suitable for relief or reserve purposes; in other words, it will not be necessary for us to have as many new planes and therefore the obsolescence charge should be less. The third trip a week seems to be out of the question during this fiscal year.

Sincerely yours,

s/ W F Coggswell

Harold J. Roig, Esq.
c/o Grace y Cia. (Chile) S.A.,
Santiago, Chile.

No. 4

H. H. Pattison, Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Pattison,

This letter is written merely as a memorandum for use in connection with subsequent developments.

Mr. Rihl arrived late last night, and we had our first conference with him at the Grace office this morning. There were present at this conference, besides Mr. Rihl and myself, Messrs. Metzner, Heavey, Dagnino and Harris. I explained to Mr. Rihl the whole situation as I understood it, revealing the history of our Chilean negotiations from the beginning, and dwelling in detail upon the present state of the negotiations, and the reasons why I considered it desirable to bring those negotiations to a conclusion at this time. I stated that the difficulties in the way of this seemed to be: first, Mr. Trippe's idea that we might possibly avoid any payment by letting matters drift to the end of our two year period, second, New York's insistence on radio ground stations, and third, New York's insistence on 50% of the mail. I explained that the other minor points could, I thought, be arranged satisfactorily, and my reasons for considering the three points mentioned impossible, with the possible exception of the last named.

Mr. Rihl stated that he had discussed this matter by telephone with Mr. Trippe, and that he had told Mr. Trippe that he considered that it would be establishing a very bad precedent for us to pay anything to Chile for the right to deliver international mail in Chilean territory. He stated that so far as the 50% of the mail was concerned he did not consider this of any importance, as under the London Conference the Post Office would deliver the mail in any case to the line maintaining the best service, and he was

inclined to agree with my statement that, even though Latecoere had an agreement giving them a percentage of the mails, the Chilean Post Office paid no attention whatever to this agreement in their despatch of the mails. So far as Radio is concerned his idea was that, if the Chilean Government was acting in good faith in offering us the use of their ground sets, it was unnecessary for us to have ground sets of our own, but that if it was merely their idea to avail of this to exact improper charges from us then the matter was of more consequence.

In the course of preliminary conversation he had stated that he saw no reason for extending the East Coast service beyond Punta Alegre unless the Buenos Aires service from the West Coast were discontinued and that he felt there was some possibility of the latter in view of the difficulties in crossing the Andes. He also had stated that the [fol. 4780] various services which the Panair were operating out of Buenos Aires to Montevideo and other points could not be made profitable unless they received some sort of Government subsidy.

After we had explained the whole situation, shown him various documents and answered various questions which he had raised, he suggested that, since Chile had never accepted any of the proposals we have made as alternatives to Decree 2001, why should we not simply let the two years period provided by this decree run off, telling Chile that unless at the end of that time they gave us a satisfactory concession without any payment, we would deliver the mail at Arica and divert our Argentine service by way of La Paz and the Argentine. I suggested that there was no point in our taking this position merely as bluff unless we were prepared to go through with it, and that when it came to going through with it I saw nothing in it, because to make this change would cost us in the long run as much as we were now proposing to pay the Chilean Government, and when we got through we would have a West Coast service which would be wholely inadequate in that it failed to serve Chile, the leading West Coast country. While naturally I did not say so, I immediately formed an impression (and the others formed exactly the same impression) that the

result of this proceeding might easily be that the United States Post Office would terminate our line at Arica and arrange for delivery of the Buenos Aires mail by way of the East Coast, the more so since Ribl in his preliminary conversation had emphasized the fact that he saw no reason why the United States Post Office should subsidize the double service to Buenos Aires, which would be the inevitable result of continuing our line and at the same time extending the East Coast line to that point.

Following these conversations Messrs. Ribl, Metzner and the writer proceeded to the Embassy in order that Ribl might have an opportunity to get the views of the Ambassador. He took the same line with the Ambassador, namely that we should retire all offers, and, if we could not make satisfactory arrangements, divert our line at Arica. The Ambassador stated very promptly that however advisable this might have been as an original proposition, he did not consider that, in view of the history of these negotiations in the course of which we had repeatedly promised Chile some payment, the Company could now take this tack without a violation of the Company's honour, which would have a very bad effect on the company's future standing. He also emphasized the fact that it would be folly to adopt this course merely as bluff unless we were prepared to go through with it. At this point I again emphasized the fact that as a practical matter this would save us no money, and that we would be going to all this trouble merely to avoid establishing a precedent, which, in my opinion, was of no consequence anyhow, as in the other countries, as well as in Chile, we would be obliged as a practical matter to settle these questions on the best basis possible whenever they arose, and that what had been done in one country would have little weight as precedent in any other. In this the Ambassador concurred.

[fol. 4781] Ribl then stated that we could, of course, not make this threat unless we were prepared to go through with it, and that, therefore, before making the threat we would have to take the matter up with Washington to satisfy ourselves that the Post Office Department would agree to this change in our route. He stated that in that case the

question would doubtless become a diplomatic one to be settled by the Department of State, and asked the Ambassador categorically what his recommendation would be if in that case the State Department asked him for his views. The Ambassador stated that in that case he would have to advise the State Dept. that in his opinion, as a matter of national policy, Panagra should be told to make some settlement with Chile, and that consent should not be given to this diversion of the route. He stated as his reason for this the fact that if Panagra were to withdraw from Chile it would leave the field clear open for the completion of arrangements with Latecoere, which would result in a weakening of American influence and a corresponding increase in French influence on the West Coast of South America, which, in his opinion, was highly undesirable from the standpoint of American foreign policy.

The Ambassador also stated that he considered there was little chance of our securing radio ground stations. He also raised the question whether the flight from La Paz to Buenos Aires would not be considerably more difficult from an aviation standpoint, to which Rihl replied that while he considered flying conditions entirely practicable over this route, there would, of course, be the difficulty of carrying heavy loads owing to the lessened efficiency of planes flying at the altitude which this route would necessitate. The Ambassador also pointed out on the question of radio and on the general situation the same fact which we had previously emphasized, that it must be borne in mind in dealing with Chile that we were dealing with a military Government which considered all aviation questions purely in this light. He also emphasized the importance of arriving at some working arrangement with the Chilean Government which would remove the existing spirit of antagonism and make possible the developement of a spirit of mutual confidence and understanding, which he felt would enable us to settle our routine problems when they came along. In this connection he emphasized the point that we had to work with the Chilean authorities for the next ten years and that we should consider this fact in forcing any unacceptable settlement at the outset, his theory being that in the long run we would gain more by

working along on a friendly basis than by making a hard trade at the start, which would only serve to plague us in the next ten years. All in all the Ambassador confirmed 100% the views which we had expressed, and gave no encouragement whatever to the line of procedure which Rihl had suggested.

As matters now stand Rihl has yet to make up his mind whether to insist on the idea of forcing a settlement without any payment, or diverting our line at Arica, and will probably be communicating with Trippe on this subject. So far as concerns Radio 50% of the mail and the other [fol. 4782] minor points, I think we will have no difficulty in agreeing with him on what is the practical course to pursue. On the main question, however, I feel clear that we must stand absolutely firm on the action of the Directors of the Company authorizing the payment of $500,000 C'cy. and loan of $200,000 C'cy. to Chile in order to clear up our situation, and must not for a moment be drawn into any idea of diverting our line at Arica. Such a course would wholely discredit Panagra in Washington, and would in my mind without the slightest doubt be availed of by Panair to reduce our line to a mere spur to Pera, with the main mail movement moving down the East Coast. If the attempt is made in New York to push this idea I think your position should be that this point has already been discussed by the Directors and the point definitely decided that we will make this contribution to Chile to clear up our Chilean situation, and that we must proceed to clear it up in accordance with this authorization, and that our partners cannot insist upon arbitrary terms calculated to defeat this end, when such terms are in fact not insisted upon in good faith, but merely for the purpose of making it impossible to arrive at a settlement.

Very truly yours,

HJR/FL.

[fol. 4783]

W. R. Grace and Company Exhibit 50

[Handwritten notation—Not uptown.]

criterion 218 to IQUIQUE 12.15.30
cable 38 to Roig.

1 218: following is for Roig
2 passenger Aconcagua
3 sentence ends No 38
i.e. cable 38 to Roig (as follow
4 as we feel
5 Trippe's
6 whole effort
7 is to stall
8 with the ultimate
9 object of getting
10 mail contract transferred from
11 west to
12 east coast we feel
13 inadvisable bring
14 up as many
15 point-s as suggested
16 in your cable
17 as we fear
18 will lead to
19 endless discussion-s
20 furthermore we think
21 would be dangerous
22 for either
23 Trippe or Rihl
24 go to chile
25 sentence ends we would
26 suggest your
27 cabling to Trippe
28 more or less as follows
29 QUOTATION BEGINS chile
30 do not recognize un-
31 ratified convention-s
32 and we think it unlikely
33 they will agree (to)
34 anything which

35 directly or indirectly
36 commit-s them to its
37 policy sentence ends
38 while plan
39 you suggest
40 omits some
41 objection-s to one
42 suggested telephone
43 neither ambassador
44 dagpino
45 nor I consider
46 government would entertain
47 either sentence ends

continued.

48 ambassador consider-s
49 the time for
50 new proposal-s
51 has passed
52 and that we must
53 now await
54 decree and when
55 issued either
56 accept with reservation-s
57 or reject
58 sentence ends this must (be)
59 done before expiration (of)
60 60 days from date of
61 decree sentence ends
62 400 hp point-s
63 academic
64 now and if it become-s
65 important later
66 believe we can get it
67 changed sentence ends
68 precedent point-s
69 simply sacrificing
70 settlement very
71 special present situation
72 in order to avoid contingency
73 which may ~~arise~~ never
74 arise and if

75 it does
76 can be much easier
77 handled than
78 present difficulty
79 sentence ends no other
80 south american country
81 has position in
82 aviation comparable
83 to chile and none
84 can give facility-ies
85 they are giving us
86 sentence ends in the face of
87 chilian national
88 policy aviation
89 which has todate
90 excluded all
91 foreign companies
92 except ours
93 flying over
94 chilian territory
95 we feel impossible
96 obtain more favourable
97 terms sentence ends
98 our friend-s position
99 extremely strong
100 and while we
101 have gone by
102 him government

(continued)

[fol. 4785]

103 will not ignore
104 his view-s and
105 decree represent-s
106 best possible compromise
107 obtainable sentence ends
108 while prepared to
109 cooperate with any
110 course company
111 decide-s (upon) ambassador
112 personal view-s
113 wisest course

to accept decree
with reservations previously
suggested everyone
here agrees
this view sentence ends Min del Interior
already being
criticized on the ground that
terms too
favourable sentence ends
I feel emphatically
that decree
should be accepted
with reservations we have indicated
and furthermore
feel that unless
it is accepted
we are likely to
run into
great difficulty and
our position and
prestige in the
country be
weakened and our
problems practical
operations will be
increased and
in the end we will
probably be
forced to accept
a basis less
favourable than
the one I now
recommend sentence ends I am
convinced that if we can get
on to a working basis
and eliminate the
basic contentious
questions we will
gradually get on
to a very

154 friendlly working basis
continued.
[fol. 4786]
155 which will enable us
156 by giving
157 good service to
158 steadily improve
159 our position and continually
160 iron out
161 minor difficulities
162 as they arise
163 sentence ends I am returning
164 aconcagua arriving
165 new york december 31st
166 as I feel
167 there is nothing
168 further that
169 I can accomplish
170 here and furthermore
171 take it for
172 granted that
173 in a personal
174 discussion and
175 explanation of local condition-s
176 many point-s
177 which you have
178 raised will be
179 clear and feel
180 confident that you will
181 then agree with the
182 view-s that
183 I have expressed
184 QUOTATION ENDS MESSAGE ENDS

Mr Iglehart.

[fol. 4787]

W. R. Grace and Company Exhibit 51

Minutes of a regular meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Hayden, Stone & Co., 25 Broad Street, New York, N.Y. on the 5th day of January, 1931 at 11:30 o'clock in the forenoon.

PRESENT:

Messrs. R. F. Hoyt
R. H. Patchin
H. J. Roig
J. T. Trippe
C. V. Whitney

being a quorum of the Board.

Mr. J. D. MacGregor, Vice President and General Manager of the corporation, was also present.

Mr. Roig called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr. MacGregor acted as Secretary of the meeting.

On motion duly adopted, the proper officers of the corporation were authorized to charter from Pan American Airways, Inc., on a bare boat basis, Sikorsky 306N for operation on the northern division during the period of overhaul of Sikorsky 300N, and Sikorsky 945M, at a charter hire of $46.16 per hour with a minimum of 208 flying hours; the charter party to provide that this corporation should have the option to purchase Sikorsky 306N at any time within thirty days from the commencement of the charter at a purchase price of $24,980, any charter hire earned prior to the purchase to be credited on the purchase price; the proper officers of the corporation were also au-

[fol. 4788] thorized to agree to pay Pan American Airways, Inc. the sum of $6,000, being one-half of the standby

charges of the reserve plane for the northern division from July 1, 1930 to December 31, 1930, such standby charge to cease on the arrival at the Canal Zone of Sikorsky 945M after overhaul, and thereafter (provided this corporation should purchase Sikorsky 306X) Pan American Airways, Inc. to pay this corporation standby charges at the Canal Zone at the rate of $1000 per month and charter hire at the rate of $46.16 per flying hour for the use of a standby plane for any period during which Pan American Airways, Inc. should require a standby plane in connection with its operations between the Canal Zone and Venezuela unless Pan American Airways, Inc. should maintain a standby plane of its own at the Canal Zone or some other point on the North Coast Route.

Mr. Roig made a detailed report to the meeting of his recent negotiations in Chile with regard to the Chilean concession which had resulted in the issuance of a decree in the form attached. He stated that a last minute change had been made in this decree without consultation with us, the effect of which was to eliminate the right to use single motor planes in carrying passengers.

Mr. Roig stated that he had been advised that the United States Ambassador had taken exception to this last minute change made after Mr. Roig had left Chile and had protested to the President of Chile who had given him an appointment next week to discuss the matter. The Ambassa- [fol. 4789] dor had advised that he believed he could get this change corrected provided he were authorized promptly to accept the decree provided this correction were made. After full discussion, it was, on motion duly adopted,

RESOLVED that the American Ambassador at Santiago be authorized to accept on behalf of this corporation decree in the form presented to this meeting provided Paragraph 3 thereof be amended to restore the right to use single motor planes without limitation of horsepower and provided that Paragraph 11 be omitted from the decree and the payment of 500,000 pesos therein mentioned be handled privately as in settlement of the controversy with re-

spect to the old decrees and not for the right to fly in Chile.

There being no further business, the meeting adjourned.

/s/ Harold J. Roe
Chairman of the Meeting

/s/ J. D. MacGregor
Secretary of the Meeting

[fol. 4790]

W. R. Grace and Company Exhibit 51X

=168

No. 5.

SANTIAGO, 30th October, 1930.

R. H. Patchin Esq.,
W. R. Grace & Co.,
NEW YORK.

Dear Patchin,

Our Santiago-Buenos Aires Division is, I believe, at the moment, and will continue increasing to be the object of Trippe's desire.

From what I can gather from conversations with Rihl and others, Panair, since the absorption of NYRBA, find themselves with an enormous expense account in Buenos Aires and no business. They have taken over the huge NYRBA offices, hangars and shops, but, apart from using the latter for reconditioning the Commodores also taken over from NYRBA, they have no manner of use for all this show, as the only service they are running is a daily service between Buenos Aires and Montevideo, which Rihl states does not pay of itself, and which we know from experience never will pay without some form of subsidy. They are, of course, talking about running passenger line to connect with their mail line at Santos and also talking of other passenger lines to other points in the Argentine, but these too we know will never pay without a subsidy, because one of the few thoroughly well established facts with regard to

commercial aviation is that a well equipped passenger line with multi-motor planes cannot be made to pay, even if it carries maximum loads every mile flown. I reckon that Panair cannot be losing less than between $50,000 and $100,000 Cag. per year in the Argentine at present, and I would not be surprised if it were in excess of the latter figure.

The result of all this is that Panair are going to be desperate to get their East Coast line extended to Buenos Aires in one form or another. Ribl states that he sees no reason why the United States Government should subsidize two air services to the Argentine and that therefore so long as our line runs to the Argentine there is no reason why the United States should extend their East Coast line beyond Punta Alegre. This is perfectly obvious, but it of course concentrates the pressure on our line as about the only way Panair can get their East Coast line extended to Buenos Aires is by discontinuing our line from Santiago. I cannot escape feeling that this is behind Trippe blocking all efforts to get the Chilean situation settled on a reasonable basis and a good deal of his other conduct. You may recall that he suggested to me a long while ago that we ought to turn over the operation of this line to them, which would probably be the first step in getting it discontinued and switched to the East Coast.

[fol. 4791] In my low moments I have sometimes thought that it might be worthwhile falling in with Trippe's idea and stopping our line at Santiago, provided we can in exchange get a controlling stock interest in Panamerican Grace, which might not be utterly impossible. This would certainly be worth some sacrifice, and we would not be giving up very much in direct revenue, because the Buenos Aires run is not going to be very profitable anyhow. I have always abandoned this idea, however, because of the fear that if our line stopped at Santiago the shrinkage in our mail movement would be such that there would be little possibility of a third trip, and we might even lose our second trip. The loss of either of these would, of course, offset any financial disadvantage from the operation of the Buenos Aires Division; I am therefore of the opinion that we should hold on to this Division, which, in my opinion,

means that we must fight for it, because our friend in his usual relentless fashion will never let up unless he has his way.

Fighting to retain this Division means, in my opinion, spending a great deal more money on it than we have ever previously contemplated, and even facing the possibility of having this line show a constant loss. I am naturally hopeful that this latter contingency may be avoided, or the loss held down to a very small figure, but there is not the slightest use of considering that we are making an adequate fight unless we are prepared to spend money and take whatever loss is necessary to win the fight. If we are only going to do a half-way job we may as well not waste any money, but make the best trade we can at this time and abandon the Buenos Aires service.

The expenditures which I believe necessary to put this line on the best possible basis are:

1. Procurement of radio services, ~~and~~ combined perhaps with radio beam, at the earliest possible moment. If we cannot get Panair radio, as seems likely, we will have to go ahead and get it elsewhere.

2. In addition to the Falcon, which, of course carries no passengers, at all, we should, I think, equip one of our Fords for use over the mountains, so that we may institute a passenger business. This will involve some expense in special equipment for the Ford, and, since the high gear-ratio will make it impossible to run the Ford beyond Mendoza, our obsolescence on this Ford will be terrific, as the amount of mileage we will get out of it will be extremely small. This will mean that the Ford will probably a little more than break even; even with a good passenger business and, if the passenger business does not develope, will actually lose a money.

3. Put a faster plane between Mendoza and Buenos Aires, and an amphibian (we may be able temporarily to use the Loening) between Buenos Aires and Montevideo; we are now using a land plane on a run which [fol. 4792] is entirely over water.

4. Make the most intensive study possible of flying conditions over the Andes, and provide promptly whatever improvements that study indicates to be reasonably necessary.

The above may not increase our actual operating efficiency as much as 2%, but it will evidence the disposition to do everything possible and offer a service reasonably comparable to what Panair will offer down the East Coast, which, I believe, will be of very great, if not indispensable, psychological importance. Since I have been here I have experienced the sensation of waiting two hours for a pilot reported to be lost coming over the "hump", and I can assure you that, if he had not got in successfully, the absence of radio, irrespective of whether it would have been of any use to him, would have been prejudicial to us. Moreover, when Capt. Wooten or any other Government representatives look over our service and form impressions about what we are doing, they are bound to have a wholely different impression of a layout such as I have described above than they must have today when they look at the litle red Fairchild which constitutes our Transandean equipment.

Very truly yours,

HJR FL.

[fol. 4793]

W. R. Grace and Company Exhibit 52

=697-A

PAN AMERICAN-GRACE AIRWAYS, INC.
122 East 42nd Street, New York, N. Y.

ORIGINAL AIR MAIL LETTER

LIMA, July 12, 1931 PERSONAL = 375

Mr. MacGregor, New York

PANAIR POSSIBLE OVERNITE STOP AT BARRANQUILLA

Receipt is acknowledged of your personal =107 on the subject of possible change in our schedule to leave Cristobal

at one o'clock. The first time I read this letter I nearly burst into flame. It seems to me that things of this sort have gone too far already with Panair. By their operation Miami-Kingston-Barranquilla-Cristobal they have managed to delay our South American schedule a whole day over the schedule that was previously in force via Porto Cabezas. They have also managed, by making the Barranquilla hop, to increase the total mileage from Miami to Buenos Aires via the west coast.

However if we get this scheme slipped over on us and have to change our whole operating schedule because Panair have trick ideas, we could stay at Buenaventura overnite and could make Pimentel the next night, Arica the next night if we step on it, Santiago the fourth night, and have the fifth in Buenos Aires & Mont'video.

Pimentel is a better stop for the overnite stop than Santa Elena. However it is not too good.

This scheme would probably mean an increase in the number of Fords we would require and possibly increase the number of pilots, besides interfering very seriously with our plans for the location of radio stations, repair bases, etc., etc. Likewise this has the distinct disadvantage of eliminating the overnite stop in Lima, which place is very desirable to stay overnite in from the standpoint of the thru passenger. It also makes us go into Buenaventura [fol. 4794] late in the afternoon when it is very rainy, keeping us overnite in the rain at this point, necessitates a landing at Pimental late in the afternoon (the field not being lighted) eliminates the advantage of the lighted airport at Las Palmas, Lima.

If you think there can be any serious possibility of the institution of this proposed schedule, please let me know and I will work up the detail of this schedule and approximately what it will cost us.

I certainly hope you can kill the idea before it gets started. It seems to me that every effort should be made to resume at least the mail transport direct from Miami to Cristobal. Naturally the Panair extension to Barranquilla cuts us out of the big advantage we had in the Buenaven-

tura-Bogota connection for passengers, giving the B
quilla-Bogota run to Scadta. In this connection it se
me that Panair have gone out of their way to help S
to our decided disadvantage. I feel sure that you
already considered these points and have taken all po
steps in connection with it.

H. R. Harri
H. R. Harri

HRH:CBR

[fol. 4795]

W. R. Grace and Company Exhibit 558.

CRISTOBAL, September 15,

PRIVATE & CONFIDENTIAL

[Handwritten notation: I understand you are taking
of this matter. HJR]

Mr. R. H. Patchin
W.R.Grace & Co.
New York

Dear Mr. Patchin:

In view of the fact that Mr. MacGregor is not in
York at present and will not arrive in Cristobal before
departure of this airmail, I am writing the following
to you since it seems to me that they may be of certain
portance just at this time.

Apparently Panair are planning to commence a one
service from Miami to Barranquilla, in the near fu
which will mean our departure from the Canal Zone s
bound at approximately noon instead of early in the m
ing. This would mean that we would have to make
overnite stop in Buenaventura, forcing us to take ad
tage of the Scadta hangar and other facilities there wi
presumably high expenditure. In addition this would d
the mail south of the Canal Zone by at least half a
over a possible one day run from Miami to the Canal Z
Buenaventura is a very unsatisfactory point for an o
nite stop on account of the heavy rains that are
countered there.

s 14 to ROIG (LIMA) august 13

m

14:

your s

do you think I can safely plan
santiago until concessions renew
quiring possibly extended perio
will go santiago when trippe
ete.

we consider
your
panagra
task
so
important
that we
should make
every possible
sacrifice
allow
you to
conclude it
without interruption
sentence ends
clarks
opinion
is one
of the
strongest
defences
would be
adefinite
step;
now in
improvement
of service
and
think you should

15th 1934

an remain
newed re-
riod if so
e arrives

31 develop
32 with
33 harris
34 a plan
35 for
36 making
37 the
38 most important
39 step
40 compatible with
41 conservatism
42 and
43 security sentence ends
44 . we are pre-
45 occupied
[fol. 4798]
46 by the
47 fact
48 that
49 whole
50 publicity
51 effort
52 has been
53 directed
54 toward
55 improvement
56 east coast
57 service
58 and the
59 further
60 fact
61 that
62 in
63 conversation with
64 trippe
65 we
66 found
67 he was
68 preparing to
69 present
70 a 6 day

71 schedule
72 for the
73 west coast
74 and
75 takes the
76 attitude
77 that the
78 east coast
79 and
80 west coast
81 schedule-s
82 should be
83 the
84 same sentence ends
85 he was
86 intending to
87 present
88 the
89 6 day
90 schedule
91 in
92 washington but
93 has
94 agreed to
95 postpone
96 doing so
97 until he
98 return-s
99 sentence ends we
[fol. 4799]
100 do not think
101 united states post office department
102 would
103 support
104 him in
105 contention
106 that
107 there must be
108 equal
109 schedule-s
110 and that

111 in order to protect
112 east coast
113 services
114 we must (not)
115 fail
116 to take advantage
117 of the
118 shorter
119 distance
120 the
121 faster
122 land
123 equipment
124 and the
125 possibility of
126 night flying
127 sentence ends
128 Trippe has
129 brought
130 up the
131 question of
132 their
133 chartering
134 commodore
135 and
136 subsequently
137 clipper
138 to us
139 for
140 northern
141 division
142 sentence ends
143 we appreciate
144 you will probably
145 have
146 difficulty
147 on
148 both of
149 these
150 points
151 but

152 hope that
153 you will be able to
[fol. 4800]
154 work out
155 a solution
156 with
157 trippe
158 on the ground
159 sentence ends regarding
160 chilean concession
161 garni
162 and my
163 feeling
164 is that
165 it is
166 better to
167 take
168 this
169 for
170 granted
171 at least
172 for the present
173 and
174 work on
175 cabotaje
176 which would
177 probably
178 automatically
179 give us
180 the extension
181 of
182 concession
183 sentence ends
184 we feel
185 rather
186 strongly
187 that
188 account
189 the
190 strong
191 national-
192 istic

193 feeling
194 in chile
195 it may be
196 preferable
197 to avoid
198 too
199 direct a
200 foreign
201 approach
202 and avail of
203 some
204 strong
205 chilean
206 influence
207 to help
208 in
209 obtaining
210 results
[fol. 4801]

Mr. Cogswell.

W. R. Grace and Company Exhibit 55

iglehart 18 from ROIG, Santiago Aug: 26, 1934
9 am

1 18 may 17 ??
2 1/16th words

trippe has agreed to buy one more (douglas)
which harris considers all necessary
harris expect to be able to cable
authorization to newyork tonight

3 confirm-s
4 to me
5 unequivocally
6 today
7 and will
8 order
9 with
10 panair
11 after

12 his
13 return
14 New York X
15 suggest that you
16 follow up
17 on his
18 arrival
19 30/41st words

for your private information says ge
motors selling eastern air express and
implies panair try to get control

20 now
21 adds
22 president
23 commission
24 returning
25 september 1st
26 prepared
27 recommend
28 plan my
29 hand
30 written
31 letter
32 Patchin
33 X
34 Suggest
35 patchin
36 contact
37 commission
38 with
39 trippe
} s M. PATCHIN
40 43 50th words

taking very arbitrary stand regarding

41 although
42 yesterday
43 told
44 harris
45 I was
46 wrong
47 asserting (that)
48 we had

general

49 bought
[fol. 4802]
50 comod-
51 ores and
52 they
53 proposed
54 sell them
55 new
56 company
57 for
58 operation
59 new orleans ?? to
60 jacksonville (florida)
61 Miami
62 told
63 me
64 today
65 perfectly
66 willing
67 to sell
68 to us
69 but
70 their
71 direction-s (probably "director-s")
72 did not
73 think we should
74 buy
75 but will
76 leave
77 open
78 pending
79 my
80 talks
81 rihl
82 your cable 25
83 33/40th words

what was trippes general reaction
to douglas publicity program.

84 promised
85 cable
86 Van

87 Duesqa
88 foday
89 cooperate (with)
90 patchin
91 your cable 22
92 your cable 24

speeding up delivery air mail all
from miami

93 while
94 agree
95 in
96 principle
97 feel
98 rather
99 delicate
100 and doubtful
101 how
102 to go
103 about
[fol. 4803]
104 X Valverde
105 suggests
106 approach
107 might be
108 state department
109 having
110 indications
111 this end
112 go to
113 local
114 United states ambassador
115 X I feel
116 most
117 effective
118 pressure
119 should be
120 through
121 C Z

ll way

125 complain
126 and by
127 planting
128 idea
129 with Pio
130 people
131 such as
132 Grey
133 son X
134 I am
135 also
136 inclined (to)
137 take up
138 vigorously
139 direct
140 with
141 Rdil
142 on the ground tha
143 taster
144 equipment
145 enables them (to
146 make
147 canal
148 by
149 present
150 route
151 in
152 1 day
153 and
154 still
155 reach
156 Barranquilla
157 in day
158 and a
159 half
160 failure
161 do so
162 can only

166 deliberate
167 effort
168 prejudice
169 our line.
170 to
171 advantage
172 their
173 east coast
174 line and
175 seadta

Mr. Garni
Mr. Patchin
Mr. Cogswell

[fol. 4804]

W. R. Grace and Company Exhibit 56

(Handwritten notation—Mr. Roig—note page 24)

Rec'd by us 9-5-35—3 P. M.

August 27, 1935

Pan American Airways, Inc.
New York

Gentlemen:

The recent survey of the Pan American Airways, Inc. and the Pan American-Grace Airways, Inc. foreign airmail contract lines, disclosed that on your F.A.M. Route No. 8 and that part of F.A.M. Route No. 5 from San Salvador to Cristobal, you are operating planes capable of maintaining a much faster schedule than is kept at the present time. The same condition obtains as relates to F.A.M. Route No. 9 which contract is held by the Pan American Grace Airways, Inc. from Cristobal to Buenos Aires, the only exception in the latter being that part of the route between Cristobal and Guayaquil.

The survey also disclosed that it is essential to inaugurate faster schedules on all of the international lines; first, to provide satisfactory mail facilities and, second, to meet foreign competitive air service which is rapidly developing in some of the countries traversed by our contract lines.

During the conferences which officers of your company recently had it was tentatively understood that not later than February 15, 1936, your company would have faster planes operating from Miami along the East Coast of South America to Buenos Aires and between Miami and Cristobal by way of Barranquilla. It is the desire of the Department to inaugurate the faster schedules as soon as practicable. Accordingly, as it is now possible to have the faster service from Brownsville to Buenos Aires by way of the West Coast, there does not appear to be any reason for further delay in inaugurating new schedules on these particular lines.

[fol. 4805] With regard to faster service from Miami to Buenos Aires by way of Barranquilla and Cristobal and along with the West Coast, the only drawback appears to be over that part of F.A.M. No. 5 between Miami and Cristobal. It is the opinion of the Department that faster service should be provided immediately between these two points named in order to connect with fast planes operating along the West Coast of South America. This should be done regardless of when faster service may be started along the East Coast.

Therefore, you are kindly requested to advise as to the earliest possible date you can provide faster service to Cristobal both from Miami and Brownsville.

Very truly yours,

(sgd) HARLEE BRANCH
2nd Asst. Postmaster General

[fol. 4806]

W. R. GRACE AND COMPANY EXHIBIT 57

iglehart 2 from IGLEHART (Santa Lucia) May 4, 1936 9 am

1 2 following is for Roig
2 referring (to)
3 our
4 discussion re

MICRO CARD
TRADE MARK ®

21

12202

MATTHEW BENDER & COMPANY

39-63

microcard

83 our
84 faster
85 boats go
86 W (west) rather than
87 east of
88 cuba
89 south bound
90 as well as
91 north bound
92 as at present
93 a quick
94 stop
95 at miami
96 for
97 mail and passengers
98 which
99 would mean
100 that
101 service-s
102 by steamer-s
103 almost the same (as)
104 by air
105 X find
106 go on ??
107 many
108 tourists
109 on board
110 are from
111 south
112 including
113 one
114 party from
115 palm
116 beach
[fol. 4808]
117 and another
118 from miami and
119 call

122 quite
123 important (to)
124 tourist
125 trade
126 X discussion-s of
127 this
128 would probably
129 bring
130 Tripp e
131 to terms.
132 on schedule
133 XXX
134 discussion-s with
135 people
136 well informed
137 make
138 me feel
139 still more
140 strongly
141 that we
142 should get
143 inland
144 into
145 colombia X
146 if you
147 could arr ge
148 S 43 fly
149 into
150 cauca
151 valley and
152 south
153 cali to guayaquil
154 overland
155 would tap
156 district-s
157 city-ies
158 of which
159 alone

162 over
163 500,000 and
164 in addition (to)
165 which
166 most of
167 area is
168 quit (quite)
169 intensively
170 popul-
171 ated X
172 would it be
173 practicable
174 fly over
175 this
[fol. 4809]
176 area
177 maintaining
178 sufficient
179 altitude
180 and keeping
181 near
182 enough to
183 sea
184 so that
185 sea or
186 river.
187 could be used (for)
188 emergency
189 landing
190 if so
191 suggest
192 Douglas Campbell
193 and or
194 Allen go
195 down
196 for our account
197 observe

201 several
202 trips-
203 and if
204 result-s
205 observation-s
206 favorable
207 then
208 have D C
209 remain
210 in bogota
211 carefully
212 look over
213 legal
214 situation
215 discuss the matter (with)
216 president of colombia,"
217 who is
218 very much interested
219 in developing
220 south
221 and see
222 if we can arrange
223 permit-s
224 or
225 concession-s for
226 flying
227 including
228 cabotaje
229 we might
230 even
231 if necessary
232 get a concession
233 in our name
234 offering it
[fol. 4810]
235 to panagra

240 I am
241 informed
242 UMCA
243 establishing
244 douglas
245 service
246 cristobal
247 turbo
248 medellin
249 bogota
250 and that
251 panair
252 consider
253 run no
254 more difficult
255 que su (than their)
256 douglas
257 service-s
258 mexico
259 central america
260 furthermore
261 learn
262 scadta air mail co
263 pilot-s
264 advised
265 smith
266 on
267 medellin to cali run
268 which was
269 considered
270 difficult
271 they were
272 delayed on account of bad weather
273 only
274 twice
275 last year X
276 from our/my
277 general
278 inquiry-ies
279 indication-s is/are
280 weather

281 would be
282 good
283 along
284 our
285 whole
286 suggested ??
287 route
288 with
289 possible
290 exception (of)
291 quito
292 to guayaquil
293 XX by
294 following
[fol. 4811]
295 above
296 course
297 we might
298 conceivably
299 develop
300 practicability
301 using
302 douglas
303 northern division
304 and so
305 unify
306 whole
307 service
308 to great advantage
309 and
310 consider
311 buying
312 douglas
313 instead (of)
314 another
315 S 43 X
316 think you should
317 give instructions
318 immediately
319 collect

320 information
321 origin-s
322 destination-s
323 routing-s
324 of each
325 passenger
326 cristobal
327 lima
328 stgo BA
329 in order to be able (to)
330 study
331 whole matter
332 more
333 intelligently

Mr. Roig

[fol. 4812]

W. R. Grace and Company Exhibit 58

iglehart 1 from GARNI (CRISTOBAL) august 3rd 1936. 10am

[Handwritten notation—Evidence of really bad service—Confirm and send copy of letter to Whitney]

1 1:
2 although
3 arrived on schedule
4 miami
5 did not
6 take off
7 there
8 until
9 9.15 am
10 consequently
11 stayed
12 overnight
13 kingston (jamaica)
14 passenger-s
15 having to
16 get up

17 3.45 am
18 2 (to) make
19 up time
20 but as
21 sorting
22 of
23 mail at
24 barranquilla
25 where we
26 arrived at
27 8.40 am
28 took over
29 6 hours
30 we did not
32 arrive here
32 until
33 5.25 pm
34 sentence ends am
35 reliably
36 informed that
37 since
38 inauguration
39 new schedule
40 only one
41 plane
42 made
43 it to
44 here sentence ends
45 intention
46 now is
47 make
48 lima
49 monday (i.e. august 3rd)
50 santiago
51 tuesday (i.e. august 4th)

[fol. 4813]

W. R. GRACE AND COMPANY EXHIBIT 59

Air Mail 8.9
New York 8.13

No. 2
(AG Trip Series)
W. R. GRACE & Co.
7 HANOVER SQUARE, NEW YORK

A. GARNI
FIRST VICE-PRESIDENT

[Handwritten notation—8/13/36]

SANTIAGO, August 6, 1936.

Harold J. Roig, Esq.,
NEW YORK

Dear Roig:

PANAGRA

The following actual itinerary of my trip, together with the various observations, may serve a useful purpose in future discussions:

July 31–Feb. 4—New York to Santiago

Left New York	Fri.	10.10 PM	Arr. Miami	Sat.	6.02 AM
Left Miami	Sat.	9.10 AM	" Havana	"	10.40 AM
" Havana	"	11.15 AM	" Kingston	"	2.56 PM
" Kingston	Sun.	5.25 AM	" B'quilla	Sun.	8.40 AM
" Barranquilla	"	2.56 PM	" Cristobal	"	5.25 PM
" Cristobal	Mon.	5.40 AM	" Balboa	Mon.	6.00 AM
" Balboa	"	6.08 AM	" B'ventura	"	8.59 AM
" Buenaventura	"	9.18 AM	" Tumaco	"	10.35 AM
" Tumaco	"	10.48 AM	" Guayaquil	"	12.41 AM
" Guayaquil	"	12.56 PM	" Talara	"	2.09 PM
" Talara	"	2.22 PM	" Chiclayo	"	3.33 PM
" Chiclayo	"	3.37 PM	" Trujillo	"	4.20 PM
" Trujillo	"	4.25 PM	" Lima	"	6.22 PM
" Lima	Tues.	6.15 AM	" Arequipa	Tues.	9.15 AM
" Arequipa	"	9.43 AM	" Arica	"	10.53 AM
" Arica	"	11.21 AM	" Antof.	"	1.25 PM
" Antofagasta	"	1.46 PM	" Santiago	"	5.36 PM

(*All Eastern Standard Time*)

New York/Miami: This was the smoothest part of the whole trip and as you will see from the above itinerary we arrived only a few minutes late.

Transfer from one Miami Airport to the Other: The first detail that struck me was that the passengers were left to sort out their own bags and carry them to the bus, although there appeared to be a man there detailed to this particular job but he was still rubbing his eyes. The bus took the passengers in a very roundabout way to the air- [fol. 4814] port, first going to Miami and stopping at Panair's office for about 35 minutes, where passengers were told they could avail of the opportunity to get some coffee next door. I asked the bus driver why he did not go straight to the airport and he replied that normally he did go direct but would then have to come back to Miami to pick up a few passengers and that in this way he could save a trip.

We arrrived at Panair's airport in ample time to go through the usual performance of re-weighing luggage, filling out various forms, etc., but when the hour of departure arrived, 8 A. M., nothing happened to our plane, which was still sitting on dry land. As time went on I inquired the reason for holding up the procession and I was told that they were waiting for a spare part coming from Bridgeport. If seems that this spare part came with us from New York but the transfer from one airport to the other appeared to have taken two hours, as according to my observation they did not get busy with it until shortly after 8 o'clock, with the result that we took off 1 hour and 10 minutes late.

On arrival at Panair's airport at Miami I noticed the same old sign which I saw last February, announcing departures for Havana as also for Cristobal at 8:15 A. M. I said to one of the men behind the counter that I thought the hour of departure for both planes had been changed to 8 A. M. and he smilingly replied that I was correct but that they did not as yet get around to changing the sign.

Miami/Barranquilla: The delay of 1 hour and 10 minutes [fol. 4815] at Miami made it impossible to reach Barranquilla as the captain of the boat said that the deadline for taking off at Kingston was 2:55 P. M. (as indicated in my

letter No. 1). The passengers destined for Barranquilla, of whom there were two of the nine we carried, were quite disappointed. We took off at Kingston as indicated in the itinerary and although you told me before leaving that the sorting of mail at Barranquilla was reported to take six hours, I did not at the time take you seriously. Now, however, I know differently and can confirm that you were out to the extent of only about ten minutes as we arrived at 8:40 A. M. and the sorting of mail began at once, and we took off when it was finished at 2:56 P. M., or exactly six hours and 16 minutes after arrival.

Barranquilla/Panama: As you know, before approaching Panama, just after passing the San Blas Islands, they go straight overland, and I imagine it is the same kind of country you would find from Panama to Turbo, and I must say that to attempt to make that trip to Turbo with a land plane is flirting with danger.

Panama/Santiago: As you probably know, we made Panama/Lima in one day, as also Lima/Santiago. We encountered a great deal of fog, particularly between Panama and Buenaventura, where practically nothing could be seen until we arrived. The two bad spots, however, which preoccupy me considerably were from south of Paramonga, particularly from Chancay to the Lima Airport. At that time the sun set and it began to get dark rapidly just as were heading into an impenetrable fog which made the [fol. 4816] approach to the Lima Airport impassable, or at least so it seemed to a non-connoisseur. Captain Colliver, however, headed straight towards the sea, taking no chances, until he found a hole in the wall enabling him to get to Limatambo, where it was relatively clear.

Arica was another bad spot where nothing whatever could be seen and Captain Cantwell headed a considerable distance west over the ocean where we circled around for, I should say, about 10 minutes. This does not seem very long when you sit in a soft office chair but it is different when you go through it in a plane through dense fog.

From Arica south we headed straight over the ocean, although I was under the impression that this was prohibited. However, we had not much choice as there was

quite a thick fog all along the pampa. We passed close by Iquique and shortly after that we headed towards the pampa.

The last 200 miles or so before arriving in Santiago is very impressive and picturesque but it is still a puzzle to me what would happen in case the engines gave out, as I could not for the life of me see anything but a lot of sharp peaks. I suppose, however, that anyone having made the trip a dozen times or so would not feel a bit apprehensive about these contingent risks.

While it has been demonstrated several times that Panama/Santiago can be made in two days my impression is that we are running some risk in doing this regularly dar- [fol. 4817] ing winter time when it gets dark in Santiago, for instance, at about 5:30/5:40 E. S. T., bearing in mind also the fact that fogs seem to be more prevalent in winter than in summer. During the summer months I believe it would be feasible to adopt a 2-day itinerary but I repeat that I would not do it during the winter months as there is no margin whatever to make either Lima or Santiago in daylight, as you can see from the above itinerary, which was so rapid that practically all the way from Panama to Santiago I could never smoke a pipe in peace as just about when I got going well we had to hop off again.

According to my observation they went considerably above the normal speed to make the above itinerary, which will undoubtedly be reflected in additional gasoline consumption.

Miami/Panama In One Day: It is not possible to make Panama in one day and arrive in daylight, unless they leave Miami at about 6:30 A. M., because even if they had left at 8 o'clock they would have arrived at Kingston 1 hour and 10 minutes earlier, or say at 1:46, and allowing 20 minutes for taking on gas and passengers, would have arrived at Barranquilla at 5:21 P. M., and giving them 19 minutes to take on gas there, they would have taken off at 5:40 P. M., arriving at Panama at just about 8 P. M., which, of course, would be too late. It seems to me, however, that for the purpose of getting the New York mail at Newark airport, the Eastern Airways, instead of leaving at 10:10 P. M., might

easily leave at 8:30 or 9 P. M., and instead of allowing two hours at Miami this might be cut down to an hour and a half [fol. 4818] or even an hour and a quarter. In this way we could get about an hour and a half or two hours additional time, which is just about the margin they need to make Panama with reasonable safety. There is one ~~unfortunate~~ feature about this three-day summer itinerary to Santiago, namely, the fact that when it is summer here it is winter up north, but whether it be summer or winter at Newark or Miami it is just as easy to take off there at 8:30 or 9 P. M. as it is at 10:10 P. M.

You will appreciate that when I am groping around for a three-day itinerary I am referring only to the South American summer period as I do not believe that with the existing equipment it is feasible to have a regular two-day itinerary between Panama and Santiago during the South American winter. Of course, the most direct solution would be to go from Kingston straight to Panama. The purser on board the boat from Barranquilla to Panama tells me that the distance from Kingston to Panama direct is 501 miles as against 652 miles via Barranquilla. As far as the weather conditions across the Caribbean are concerned, I know, of course, nothing about them, but I think that any statement to the effect that it is more hazardous going direct rather than via Barranquilla is just a lot of bunk. Furthermore, I believe that to land at Panama even after sunset is not nearly as hazardous as it is to land after daylight in some other places, as, for instance, Lima.

Handling of Luggage: One thing drew my attention, namely, the fact that they still have no "through arrange- [fol. 4819] ment" to take care of charges for excess luggage. Everything is carefully weighed at Newark and a lot of "papeleo" is made out covering excess baggage and the passengers pay for such excess for the Newark/Miami section only. At Miami you go through the same performance again, all of which, of course, means delay, particularly if you happen to have six or eight passengers with excess luggage, as the amount of paper work connected therewith is quite considerable.

At Panama the luggage was again rechecked and reweighed but no papers had to be made out in my case and

no payment was requested, presumably because I am connected with the company and the charge will be made by debit note.

Luncheons: The luncheon taken on at Miami was excellent but the same cannot be said of the luncheon served on board between Panama and Lima, and less so of the luncheon between Lima and Santiago. The service in this respect leaves much to be desired as when you consider that you are not allowed to smoke you get ever so much hungrier than you ordinarily do and have nothing that is fit to eat for two days running.

Outside of the luncheon criticism my impression was that the Panagra service is better than the Panair. The individual attention is more impressive and all in all there is much more snap to every kind of function both on board and on the ground. The personnel generally inspires one with considerable confidence, particularly the pilots, and I think they deserve a great deal of credit for the handling [fol. 4820] of the ships.

Now, I know that probably none of the foregoing information is new to you for after all, you have done so much more travelling by air than I have, but I could not resist the temptation to give you my impressions as also to submit to you the actual itinerary followed on this particular trip.

Very truly yours,

/s/ A. GARNI

[fol. 4821]

W. R. GRACE AND COMPANY EXHIBIT 60

CRISTOBAL

September 19, 1936.

Mr. H. J. Roig,
NEW YORK.

Dear Mr. Roig:

Thanks very much for "LOST HORIZONS" which I read with a vey great deal of interest. Mr. Harris will

arrive this afternoon from Lima, and I shall deliver to him the book you kindly sent to him.

I had a very delightful trip south. We were, of course, very fortunate to escape any effects whatsoever from the hurricane which was raging in the east and which, from the papers, it would appear is now harrying the sea-coast around New York.

I have a cable from Mr. Vidal telling me that George Rihl will leave New York on Tuesday via Mexico City and will arrive in Lima October 1st. I take for granted that George interviewed you during the last week and that he will bring with him very definite instructions for our work in Buenos Aires. I plan to leave for Lima tomorrow, Sunday, and may possibly, if I find there is time, run up to La Paz to see Guzman Tellez before Rihl's arrival. I just missed Mr. Garni at Barranquilla, but understand he had a pleasant trip from Santiago. He should have reached New York before the present bad weather set in.

You will, of course, have noted that the last southbound Panair-trip #150 overnighted at Kingston. The local Panair office never receives information as to what causes a delay, because their radio communication only goes as far as Kingston, and Miami. Operations never advise the reason for delays. The only way our Cristobal office can obtain the information is through friendship with the crew of the plane, and such information as they are able to get is, of course, not available until the plane arrives. Please take [fol. 4822] this into account in connection with these delayed arrivals. Also, it is possible the Panair crews have now been advised to say nothing because of the recent adverse criticisms in the local press, and the fact that we ourselves have displayed a knowledge for the causes for the delays which could only have been received from talking with the members of the crew.

Yours very truly,

J. D. MacGregor

JDM AW

[fol. 4823]

W. R. GRACE AND COMPANY EXHIBIT 61

Copy for Mr. A. Garni.

[Handwritten notations—Mr. Roig √ Mr. Cogswell √ Mr. Patchin √—File—Mr. Garni]

Hotel Tivoli
Ancon, C. Z.
December 7, 1936.

Mr. J. D. Mac Gregor,
BUENOS AIRES.

Mr. Branch expressed a desire on December 4th to observe the physical transfer of airmail from Panagra to Panair at Cristobal. Consequently he and Mr. Michaelson, Balluder and I took our plane from Balboa on regular schedule December 5th to Cristobal. At Cristobal we were joined by Mr. Campbell and Mr. Taylor, the Cristobal Postmaster. Mr. Branch apparently had no criticism of the physical exchange but asked a number of questions about the safety of the mail for Central America which is stored overnight in the vault in the Panair passenger station at France field.

We remained in Cristobal overnight in order to take advantage of a trip which I had arranged with Major Taylor, acting Commanding Officer of France Field, to take Mr. Branch and Mr. Michaelson on a fishing trip December 6th. This fishing trip carried, in addition to Major Taylor, Captain N. B. Harding, Mr. Branch, Mr. Michaelson, Mr. Flexer, American Chargé d'affairs in Panama, Mr. Balluder, Campbell, and me, and proved to be most satisfactory to all on the trip even though no fish were caught. The United States Army Air Corps crash boat was used. The trip was made from France Field through the breakwater to the mouth of the Chagres river, where we disembarked and visited Fort San Lorenzo on foot. This is a most interesting ruin of the Spanish time, captured and sacked by Morgan's men in 1671.

The fishing trip was resumed up the Chagres as far as the launch could go, when we disembarked and walked to

the Gatun locks, from where we returned to France Field by automobile and from France Field to Albrook Field in a special Panair Ford through the courtesy of Mr. Balluder.

During the launch trip Mr. Branch took the opportunity to speak to Mr. Balluder, Mr. Campbell, and me about the negotiations he had been having with Pan American Airways in regard to the additional services on the East coast of South America. He stated that a final agreement had been reached in writing whereby Pan American Airways would receive payment for a second service from Miami to Pará until such time as Mr. Branch could secure additional funds with which to pay for a second trip on the East coast all the way down. This payment for the second trip was also predicated on the establishment by Pan American Airways of a one day service from Miami to the Canal Zone, and Mr. Branch made this the key note of his conversation with us, also that Panair would operate a second trip through Brazil on a cut-off, thus eliminating what Mr. Branch called "the Brazilian elbow." Mr. Branch led us to believe in his conversation that if these two promises by Panair—that is, Miami/Canal in one day and operation of the Brazilian cut-off—were not forthcoming in six months after the payment on the East coast second trip South of [fol. 4824] Pará was commenced he would consider that Pan American Airways had violated their agreement, with presumably the consequent cancelation of the mail pay on the second trip. Mr. Branch intimated that he felt that so far Pan American Airways had not shown entire good faith in connection with their operation between Miami and the Canal. As far as he could see they were not taking any steps toward the implantation of a direct service Miami to the Canal in one day. Mr. Branch stated he had told Mr. Trippe that improvement on the East coast—by which I presume he meant airmail payment for a second trip—was only justified if the West coast service to Buenos Aires was speeded up by means of a one day connection between Miami and the Canal, and that this matter was in his mind of vital importance.

You will note that this above conversation confirms what Mr. Branch told Mr. Garni and me in our postal conference

as reported in my letter to you of November 28th (JDM 2123).

/s/ HRH
H. R. Harris

HRH:KW

cc—NY
Mr. Garni√

[fol. 4825]

W. R. GRACE AND COMPANY EXHIBIT 61X

[Handwritten notation—Panagra]

MEMORANDUM OF CONVERSATION WITH
J. T. TRIPPE, SEPTEMBER 14, 1934
AT HIS OFFICE 4:00 PM

oooOooo

After discussing various general matters, I said that we had all become convinced as a result of certain recent developments and particularly various matters which had come to my attention on my trip, that a serious situation existed with regard to Panagra which we would have to find a way to remedy and, painful though it might be to do so, I felt that we should discuss the matter with the utmost frankness.

After some general exchanges we proceeded to the situation in the northern division. I pointed out that some time before I went south I had discussed with Trippe what the ultimate equipment should be in this division and since that must necessarily be somewhat delayed what temporary equipment we could secure in the meantime. He had himself suggested the Commodores at a price, as I recall it, of $20,000 each without motors and I had acquiesced in this suggestion, it being at the same time decided that we should get new estimates on the boat which had previously been worked out to our specifications. I was, therefore, very much surprised now to find that there was any question about these Commodores.

He said that at the luncheon in question I had not taken any definite commitment about the Commodores nor had

he but that the matter had merely been discussed, he pointing out that they might have use for the Commodores in other directions, including sale to the Gulf Line. I replied that I had no recollection of any mention of the Gulf Line and that to the best of my recollection the matter had been [fol. 4826] to all intents and purposes settled at that time. He pointed out that we had at that time discussed the other possibility of a Ford on floats or use of Panair's Sikorskies. I agreed that we had discussed both of these but that he had been opposed to the former and I the latter. He then launched out on a long discussion of the advantages of the Sikorskies, pointing out that there would be a great saving from this operation as well as a great improvement of equipment. I replied that I had seen no figures to indicate any saving and that quite apart from other reasons already discussed I saw no use in putting on such big equipment on this division when Pan American, through their foreign subsidiary Scadta and Umca were chiseling away all the traffic in West Coast Colombia and diverting it away from our line, this applying not only to passengers but also to mail and express. He denied that they were doing this, stating that the reason our traffic had gone off was because of the S38s and that with better equipment, such as the Sikorskys, we would find the travel returning to our line. I pointed out that this would have no bearing on mail and express and was impossible as to passengers so long as he was favoring this territory with a better service via Barranquilla than he was giving our line and that the only solution to this was a one day service to the Canal. I pointed out that such a service was perfectly possible with the new faster equipment and that the advantage of this excess speed which was being provided by his U. S. mail subsidy should be made available to the West Coast line which was also a U. S. line and not to the foreign lines operating in Colombia. He said that this was not a fair statement because the Kingston/Barranquilla hop was the result of [fol. 4827] experience in flying the other way and represented a saving of 200 miles over water flying which meant not only greater safety but the saving of $50,000 or more to the U. S. in mail pay. I replied that I was sure there was some way of making the trip in one day to the Canal if he

wanted to do so and felt that the real reason for their not doing so was to prefer the East Coast Line in every possible way over the West Coast. I pointed out that this was further emphasized at the other end of the line where every effort was made in B.A. to emphasize the fact that Panagra was merely a West Coast line and that the only way to the States was via the East Coast. I pointed out that this was further emphasized by the elaborate publicity directed to this end which he had conducted in connection with the Brazilian Clipper and the directly opposite view he took with regard to all publicity in the U. S. and B. A. in connection with the Douglases; that his suggestion of publicity in Santiago and Lima was ridiculous and academic because, of course, we would have publicity there and that the important point we wanted to emphasize was that our line was a line between the U. S. and Buenos Aires. I called attention to the fact that although he had radioed me that he invited the people in the Brazilian Clipper to return by the West Coast, I knew for a fact that he had on the contrary urged even those who wanted to come that way not to do so and that upon my return I had found him knocking our line in the newspapers and that the only conclusion that could be drawn from his attitude in all these matters was that he was seeking in every way to prejudice the West Coast line to the advantage of the East Coast and that this was no way for a partner to act. He asked me if I thought [fol. 4828] that he had said what had appeared in the World Telegram. I told him that I thought he had, if not in words, in effect, because it was the way he felt and the way he had frequently expressed himself to me and in substance the way he had expressed himself to at least some of the newspaper men on the Clipper. I said that when I first heard of the article I told George Rihl I felt sure that he was not the source of this statement but that upon returning to New York I found it had come out in an interview with him and that in that interview or on some other occasion he must certainly have said something which constituted the basis for this statement.

He took emphatic exception to the conclusion that he had taken an improper attitude with respect to the West Coast

line, stating that he had invited all of his guests on the Brazilian Clippe to return by the West Coast but that he had urged them not to do so as he felt that for them to travel up the West Coast and through Central America on the Fords would destroy what he was trying to accomplish by the trip; that it meant giving up places in his Central American planes while running empty seats in the Clipper; that in spite of our knowing his views on this subject Patchin had asked various of his guests to return via the West Coast and that far from surpressing Panagra's service he had in his speech in B. A. called attention to our service and the fact that we were putting new Douglases on shortly. I called his attention to the fact that there was no reason why he should have made disparaging remarks about the Fords; that they were still perfectly first class equipment and that to criticize them would only give rise to the unwarranted impression that they were not suitable planes to travel in; that it was not our fault that the Douglases [fol. 4829] ordered almost a year ago had not been delivered and that in fact the people who had taken the West Coast trip found the Fords perfectly acceptable.

In connection with the foregoing and in support of the point that he was preferring the East Coast line I also went into the subject of schedules stating that we should have a four day schedule and that his attempt to hold our schedule down to a point where the East Coast could meet it was absolutely unwarranted as we were entitled to the natural advantages which came from a shorter mileage and the increased speed of land equipment and that he was deliberately defeating these natural advantages not only by the schedule imposed but by hampering the development in the northern division by delaying the use of faster equipment there and proposing the use of his slow Sikorskys which would keep us indefinitely held down to a slow schedule in this division. He replied that as long as I was speaking of his knocking our line he had learned from Government officials that we were regularly planting in their minds the fact that Panagra's line was shorter to prejudice the East Coast Line, stating further that from a financial standpoint the West Coast Line was more expensive to the Government

than the East Coast, the net cost on the East Coast being reduced by a larger mail revenue to the Post Office, stating that if the Post Office wanted to run the most economical service they should divide the present three trips 1½ to each Coast by running an alternate service every five days. He emphasized the fact that he had never used this point and that all of his figures always combined the mail figures of the whole system although he could at any time have emphasized this situation by showing the East and West [fol. 4830] Coast Post Office revenue separately. I replied that as I had never seen his figures I knew nothing about them and that it nevertheless was the fact that our line was the more direct.

On the subject of Douglas publicity, his objection was that publicity in Washington at this time would be contra procedenti, and a ceremony in New York or elsewhere in the United States would not be effective as the planes were not new and both Pan American and TWA recently had tried a ceremony of this kind which had been complete failures. His idea seemed to be publicity on the Coast which could be reported here. He said that he might be able to arrange for a radio hookup here to report any proceedings on the Coast. There was no particular discussion of publicity in B. A. but as he has stated his views on this subject on other occasions I do not infer from this that he would approve of such publicity.

He asked me what my impressions of the line were, recalling that I had said when I went away that I hoped after my return to have some clearer views on the basis of which we might work out a more satisfactory modus operandi. I told him I would come to all this in due course, that in general while as in any business there were always some possibility of improvement, my experience with the line had convinced me that it was a first class operation and that his ideas to the contrary were not well founded.

[fol. 4831]

W. R. Grace and Company Exhibit 62

W. R. GRACE & CO.
NEW YORK

PRIVATE AND CONFIDENTIAL

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Airmail	8/22/34
Lima	8/29/34
Santiago	9/1/34

New York, August 22, 1934

Harold J. Roig, Esq.,
Lima, Peru

Dear Roig:

As a result of my talks with Grenville Clark, Root came to see me yesterday. He said that he had for some time had an idea that he or Clark, or both, might in some way mitigate the friction or relative impasse existing in Panagra administration. He asked me for my opinion. I replied that there were two fundamental causes of misunderstanding. First, a wide cleavage of policy—Trippe's line leading strongly toward promotion and ours more in the direction of older fashioned business methods. I gave great importance to the promotion and propaganda activities of Trippe and felt that they had not only benefited Pan American but also Panagra greatly but that we were in favor of more caution in expenditure and that at the same time we were always strongly in favor of having ample and most up to date equipment and service. I explained that our policy was a constructive one as evidenced by the fact that we are about as up to date steamer operating people as any company in any country.

Again, I told him that in the matter of policy there was also a cleavage of views, our idea being that Panagra should, as originally contemplated, be operated as a sepa-

rate enterprise and on its own feet, whereas Trippe's idea was that it should be thrown bodily into his operating system and at least to a relative extent lose its identity.

The second point of difficulty I told him I considered a fundamental and very serious one which I explained to him, of course in strictest confidence, was a lack of complete confidence between the partners. He replied that he had [fol. 4832] never seen any evidence of lack of confidence in us on the part of Trippe except the suggestion from time to time that we were in the steamship business and might give preference to the steamship interest to the prejudice of the air interest. He asked me what reason I had to believe that there was a lack of confidence and I explained to him that we were fearful of Trippe's giving preference to the East Coast service at the expense of the West Coast. He said that he had never seen any evidence of this and asked me what cause I had for this suspicion. I explained to him that the issue had come up directly or indirectly from time to time and that Trippe some time ago took the attitude that he was justified in giving preference to a 100% interest as against a 50% interest. Root replied that he was dumbfounded at Trippe or anyone taking such an attitude. He said he couldn't imagine a man sitting on a board of directors here and failing to act fully in the interest of that company because he had a competing company on 42nd Street in which he had a larger interest. I then explained to him the recent incident of the schedule as outlined to you in Cogswell's handwritten letter. He said here again that these facts were surprising and on the one hand gave him an entirely new light on Trippe's attitude and, on the other hand, gave him the impression that this created a very serious condition. After thinking the matter over for some time, he said that even from the selfish standpoint of Pan American, he felt that Trippe was making a very serious mistake in taking this attitude for various reasons which he gave me. Root said that with the Government hearings coming on he thought it very serious indeed that there should exist in Trippe's mind any feeling of discrimination between the two services. I told him that we felt this also and although I didn't say so, I think that he

appreciated that he as counsel for both companies, was rather responsible for seeing that no action was taken by a representative of one company which was prejudicial to the interests of the other.

[fol. 4833] From this standpoint I was very happy to have had this frank talk with Root. I don't think it had entered his head before that Trippe was capable of taking such an attitude.

Now as to the solution of the impasse. Root said that he, in view of what I had told him, almost despaired of reaching a solution as he felt that Trippe would resist any plan which solved it. After some discussion in which I explained to him that you and Trippe had at one time been discussing a division of responsibility, it finally occurred to me to make the following suggestion, namely, that the Board of Directors of Panagra should be composed of three members, namely, you, Trippe and Lindbergh. I explained to him that a division of responsibility between you and Trippe would only work out provided there was a third member of the Board who could decide any contentious question and I suggested Lindbergh because, in the first place, he is knowledgeable and, in the second place, he can be relied upon for absolute fair dealing. Root agreed with me that on both of these points, Lindbergh was about 100% and Root finally said that he considered that, if this suggestion could be carried out that it would in his opinion be an adequate solution of the difficulty and would probably result in Panagra's being built up on sound, strong lines. He said that the two hurdles to be overcome were, in the first place, to get Trippe to agree and, in the second place, to get Lindbergh to agree. He said he thought from his knowledge of the two men that there was about a 50% chance of accomplishing it. He said that he wanted to think the matter over pending Trippe's return and would then, provided no objection occurred to him in the meantime, make the suggestion to Trippe. He said that he would make it as his own suggestion as if Trippe suspected that it came from us it would be prejudiced.

I should like to have had an opportunity of consulting you before making this suggestion but as a matter of fact, it [fol. 4834] developed in the conversation and I rather took it for granted that you would approve of it. If by any chance you do not, or you have any observations to make with reference to it, you might let me have them by cable promptly. As a matter of fact, if you approve of it you had better cable also as I will feel sure of my ground in case there should be any further discussion with Root. I am going to see Clark on Friday as he is coming down from Dublin and I am going to see whether there is any way we could take up the matter with Lindbergh and get his consent before we take it to Trippe. It may be difficult or impossible to do this but the idea I have is that if we put forward this proposal and had Lindbergh's consent it would be almost impossible for Trippe to reject it. On the other hand, if we put the proposal first to Trippe, he might maneuver to get Lindbergh to refuse to act. My idea is that if Lindbergh should refuse conceivably we might get Root to act as the third man or, if not Root, then perhaps Clark. Every day, however, I become more convinced of the necessity of getting this problem definitely settled provided there is a practicable way of doing so.

In talking over the problem of equipment, I explained to Root Trippe's desire to fly his clippers down as far as Guayaquil and our idea that this might be worked out provided we actually owned our share of the equipment and provided they were operated over our section of the line under our supervision and control. He said to me that this appeared to him a very reasonable attitude on our part and indicated that if Trippe insisted upon taking over the operation as far south as Guayaquil, that this was an evidence of a desire to chisel into our territory. He also felt that Trippe's attitude in flying the planes to Puerto Colombia and giving a service to the West Coast with the Scadta Line in competition with our line and his failure to [fol. 4835] fly direct to Panama in order to give us quick service, was quite an unjustifiable act on his part.

Nothing may come of this talk with Root in the way of solving our fundamental problem but I am rather hopeful that something will be accomplished.

Very truly yours,

(Sgd.) D. S. Iglehart

cc to Santiago

[Handwritten notation—If we could work out a set up as above then we could get a first class man and make him President. I am asking Cogswell to offer you 2 more Douglas planes so that you may have them in hand when you talk to Trippe.]

[fol. 4836]

W. R. Grace and Company Exhibit 63

December 28, 1928

David C. Beebe Esq.,
United States Aviation Underwriters,
80 John Street,
New York City.

Re: South American Aviation

Dear Mr. Beebe:—

In accordance with our conversation of today, I am setting forth herewith a rough summary of our present organization in Peru, with the discussion of our proposed expansion.

We are joint owners with the Pan American Airways of the Peruvian Airways Corporation which is an American Corporation operating in the Republic of Peru. The equipment on the ground consists of two Fairchilds planes and a few spares and we are preparing to ship one or two additional planes next week.

We have organized under the same ownership, the Chilean Airways Corporation for the purpose of operating commercial air lines throughout the extent of Chile. Although there is no equipment on the ground at the present

time, yet we are preparing to ship one or two planes in the immediate future to encourage a service between Santiago and Arica.

The above two lines are simply the neucleus of our proposed extensive system which will operate a commercial air line from the Panama Canal Zone to Santiago, Chile and possibly to Concepcion during 1929. Subsequently, we shall most probably install an air line between Santiago, Chile and Buenos Aires, Argentina. This latter section is not however included in our immediate program.

While I thoroughly appreciate that the present set-up of our companies does not present an attractive picture to you, yet it is essential that we develop some definite policy on insurance to cover the ultimate extensive service which we shall perform. It is impossible to estimate the total capital which will be invested in flying equipment but you can readily see that it will be a very considerable sum and must necessarily be protected.

[fol. 4837] At this time we are particularly interested in obtaining proper coverage for passenger liability in Ecuador as we have planned to extend our service into that country as soon as possible. At the same time we are developing the service to connect Ecuador with Panama through Colombia and so it will be necessary for us to work out some coverage in this latter country.

We shall shortly organize one holding company which will operate each and all of the subsidiary companies which are now being formed in the various Republics. At such time as this is accomplished, it will unquestionably be desirable to transfer these local operations to the holding company that we may better develop a uniform insurance covering the entire flight subject only to local differences in the Law of each country.

The foregoing has been roughly discussed with our agents, Parker & Co., Philadelphia, Pa., to whom I shall send a copy of this letter.

In closing I cannot emphasize too strongly our urgent desire to arrange coverage for Ecuador and Chile that

we may extend our services as we have outlined in our program.

If there is any further information that you might require, do not hesitate to call on me at your convenience.

Very truly yours,

W. R. Grace & Co.

WPJ.C

[fol. 4838]

W. R. Grace and Company Exhibit 64

August
Ninth
1929.

J.T. Trippe Esq.,
Dunmere Lane,
East Hampton, Long Island.

Dear Mr. Trippe:—

Mr. White and Mr. Glover told me in Washington yesterday that they anticipated no difficulty in asking us to make the extension to Argentina. When I called Mr. Glover to confirm this today he said that they were ready to call on us to extend but they had nothing official from us as to a date but that Mr. White had in mind October 3rd.

I told him we would like October 30th better and he said it would make no difference to him if we would send in official letter.

Very truly yours,

P.S.—I am trying to get you on the telephone to-night.

[fol. 4839]

W. R. Grace and Company Exhibit 65

August 20, 1929

ORDER

From October 12, 1929, extend service from Santiago, Chile, by Buenos Aires, Argentina, to Montevideo, Uruguay, and return, once a week, including such intermediate points as may be acceptable to the Governments of these countries and designated by the U. S. Post Office Department, the contractor to be allowed $1.80 per statute mile flown each way based on the shortest practicable airway distance between points on the route as determined by the Postmaster General for the specified load of not exceeding 800 pounds each way, plus 90 cents per pound per thousand miles or pro rata thereof for greater or less mileage for any excess mails required to be carried in the same aircraft.

W. Irving Glover
Second Assistant
Postmaster General

[fol. 4840]

W. R. Grace and Company Exhibit 65X

(Letterhead of Panair do Brasil S.A., Edificio da a Noite—Rio de Janeiro)

Via "Air Mail"

October 8th, 1931.

Mr. J. D. MacGregor, Vice President & General Manager
Pan American Grace Airways, Inc.
910 Av. Roque Saeñz Peña
BUENOS AIRES. Argentina.

Dear Mac,

I had explicit instructions from Mr. Trippe to setfle with you the question of charter business arising at Buenos Aires. Unfortunately I forgot all about bringing this point up.

At the present time you have a Fairchild at Buenos Aires which has had considerable charter work. At the moment this does not hurt our interests as the Fairchild we have is in the shop waiting to be overhauled. However as soon as we get our Fairchild in shape we will be in the market to take charter flights and then a disagreement will surely arise unless it is plainly understood which company is to have preference on charter business.

My understanding is that Pan American has the right to any aviation business in the Argentine not directly connected with the operation of the international service via the West Coast. If my assumption is correct there will be no argument as to who will take the charter flights.

If the assumption mentioned above is incorrect and you insist on undertaking charter flights when we have equipment available, it will be necessary for you to register your plane in the Argentine and your company for domestic work. So far nothing has been said about you competing with domestic charters, but the question will undoubtedly come up as there are two or three owners of planes in Buenos Aires who make charter flights. These men will unquestionable complain to the government about your competition. We cannot be criticised as we have an Argentine company and will register the plane engaged in charter business under the Argentine flag.

In order to avoid complications it would seem to me that both companies should abide by the original understanding. I will appreciate your advising me as to what you recommend to your Directors.

With kindest regards,

Yours faithfully,

/s/ Geo. L. Rihl
Geo. L. Rihl, Vice President
Pan American Airways, Inc.

cc. Mr. Trippe, President
Mr. Young

GLR/PS.

[fol. 4841]

W. R. Grace and Company Exhibit 66

Letter No. 24
(D.Sd. Trip series)

Tumaco,
On board m/v "Santa Inez",
June 7, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

AIRMAIL—TUMACO

I hand you herewith copy of my letter to Harper.

My attention was called to this condition by the fact that I wanted to get a letter down to Harper at Salaverry and there is a plane going South today from here. I found, however, that I could not send this letter by our own plane. I went out to see Dunn, the pilot of the plane, at the fleet and he said that if the letter dealt with the business of Panagra he was allowed to take it but that if it was other than Company business he could receive no mail or passengers in Tumaco. It seems to me that as Scadta is giving only a weekly service from Buenaventura to Tumaco and no service to the South, it is quite ridiculous for them to prevent Panagra from rendering a service to this locality. Even if Scadta's contract permits them to do so it seems to me most illogical that they should exercise this authority and stand directly in the way of our developing the West Coast business without their getting any benefit whatever by doing so.

SIKORSKYS

I talked over with Dunn the question of Sikorskys and he says that they are undoubtedly short of capacity, and that, if the water is quiet and there is no wind as is usually the case at Buenaventura, it is extremely difficult to get into the air and he feels that the Northern run is losing

business every day due to the fact that they have not the capacity to handle it.

[fol. 4842] I feel strongly that we ought to get to work ourselves to see whether we cannot find or develop a plane that is more suitable for this Northern run. I asked Dunn about the Commodores and he said that he had flown them on the East Coast, and, although they were a very nice plane, he did not recommend investing any money in them as they were too slow. He said that to put any considerable amount of capital in a plane that could not make over 80 to 90 or 95 miles an hour was he thought going backwards and that we should not consider buying anything that could not make 115 or 120 miles an hour.

I talked to him about the Douglas Amphibian and he said that, although he had not flown one, he was not sure that they were an established success but thought we ought to look into them pretty carefully. He said that the new big Sikorskys are also worth looking into but that he believed that the speed of these would have to be pretty carefully established; furthermore, that they had the same serious objection that all Sikorskys have, namely, that the spray is thrown up into the propellers and they, going at high speed, are nicked and broken. I examined the propeller of his plane that had only flown 5 or 6 hours and it had teeth all along the edge and he said that at times pieces one-half an inch long would come out of the propeller as they hit the water that was thrown up by the pontoons and the body of the fuselage. He said what Kirkland said also, namely, that no water plane was satisfactory unless the motors and propeller were far enough away from the water to avoid being hit by the wash of the spray.

I was particularly anxious to talk to these men who actually fly the Sikorskys from day to day as I have had [fol. 4843] a feeling for some time that they, although satisfactory from a technical standpoint, are deficient in carrying capacity and are standing in the way of our development of through traffic. Therefore, I feel that we ought to pick out the best technical man we have available in our organization and set him to work on this problem.

I feel there is no reason why we should not work out either with Sikorsky or with some of the other builders the design of a plane in the same way that we work out the design of a ship or of a plant or piece of machinery.

The more I think of this aviation business the more I feel that we will gradually develop the plant that is required for the particular conditions under which we operate each one of these services and that we will build up our equipment in the same way that we have done in all of our other activities. I am sure you will find the opportunity of tactfully arranging to bring a competent man from the Coast to New York so that we can gradually build up this phase of Panagra's administration.

Very truly yours,

Enc

[fol. 4844]

Tumaco,
On board m/v "Santa Inez",
June 7, 1932.

F. J. Harper, Esquire,
Salaverry.

Dear Harper,

AVIATION

Under Scadta's agreement with the Government apparently we cannot receive mail in Tumaco either for other Colombian points or for foreign points, and, in talking to our Agents and to the local authorities they tell me that there is a very decided complaint to the Government on this point. Scadta has only one plane a week to Tumaco, and, in order to get a letter to New York they have to wait for Scadta's plane, which takes it as far as Buenaventura and there it has to be transferred to one plane to go North. It seems that the local interests complained to the Government in Bogota and the Government answered that the planes of Panagra could not take mail in Tumaco as they were unable to land there. This naturally amused the local people as apparently Bogota thinks that Panagra makes no Tumaco stop.

I think you might look into this whole matter; in fact, I would like to have you follow up the Panagra service as far as Colombia is concerned with a good deal of interest because we have Scadta in competition and, as Pan American is interested in their Company and I think now practically controls it, we must see that Panagra's interest is protected.

Very truly yours,

[fol. 4845]

W. R. Grace and Company Exhibit 67

Letter No. 7
(H.J.R.)

W. R. GRACE & CO.
NEW YORK

New York, June 17, 1932

[Handwritten notation—Airmail Rec'd]

D. S. Iglehart, Esq.,
London, England

Dear Mr. Iglehart:

Airmail—Tumaco

Your No. 24.

The point you raise here has been a sore one for some time and I will be very glad indeed if Harper can do anything to correct it. While the mail revenue is not an important consideration, at the same time, it is something and we cannot afford to overlook anything. Moreover, it seems too ridiculous that the people of Tumaco should be limited to a once a week service when they might just as well have a three times a week service. The Scadta hold on Colombian mail, however, has always been pretty tight as you can imagine from the fact that the Government has paid so little attention to the request of the people of Tumaco. The excuse given for denying that application was not, in my opinion, based on any ignorance in Bogota.

In view of Pan American's being now a practically dominating influence in Scadta, what would you think of my attempting a little pressure on Trippe on this point? While I do not think he is likely to be very receptive, we might, by keeping at it, get somewhere with him in time provided you do not feel that this would interfere with Harper's activities at the other end.

Very sincerely yours,

/s/ H J R

[fol. 4846]

W. R. Grace and Company Exhibit 68

No. 10,023

AirMail original leaves N.Y. Nov. 20
" " " arrives Buenava Nov. 23
Stemer mail copy leaves N. Y. Nov. 21
Arrives B'a. Nov.

New York, November 18, 1930.

Mr. J. H. Parmerton,
Corporacion Maritima Colombiana,
Buenaventura, Colombia.

Dear Parmerton:-

I refer to your letter No. 384, and acknowledge receipt of the enclosures, "Diarios Oficiales Nos. 18709, 21233, and 21065", and copy of the "Convencion sobre Aviacion Commercial celebrada entre las Republicas Panamericanas en la Sexta Conferencia Panamericana de La Habana de 1928".

As you state there are no privileges granted to the "Scadta" for air traffic, as the Colombian Constitution does not allow any monopolies or exclusive concessions to be granted.

The reason why "Panagra" does not want to compete with the "Scadta" on the Pacific Coast is that, according to the

agreement between Colombia and "Panagra" of February 23rd, 1930, which reads as follows:

> "Que las estipulaciones deL ACUERDO SOBRE SERVICIO DE AVIACION COMERCIAL, suscrito en Washington por los goberrnos de COLOMBIA y ESTADOS UNIDOS DE NORTE AMERICA et 23 de febrero ultimo sobre establacimiente de servicios de Aviacion Comercial, los faculta en tal sentido:
>
> Que al conceder a la PAN AMERICAN GRACE AIRWAYS INC. el permiso en referencia debe dar complimiento a todas y a cada una de las obligaciones que con caracter de reciprocidad han sido consignadas en el Acuerdo citado; y
>
> Que dichas obligaciones, iguales a las impuestas en los ESTADOS UNIDOS DE NORTE AMERICA y ZONA DEL CANAL para las naves aereas de matricula colombiana."

Colombia has the right, in its territory, to enforce all of the conditions that the United States enforces in the Canal Zone, and one of the United States' conditions is that the "Scadta" cannot carry either passengers or mail from one part of the Canal Zone to another. Consequently if "Panagra" should start passenger and mail service between Buenaventura and Tumaco, the government of Colombia might stop that traffic at any time, because of the reciprocity agreement with the United States.

[fol. 4847] If the people of Buenaventura and Tumaco wish "Panagra" to carry passengers and mail between these two points, they ought to appeal to the Colombian government to have the government waive this restriction or grant special permission to, and request "Panagra" to establish this service.

If the Colombian government asks "Panagra" to establish this service, probably, they will be willing to undertake it.

Yours very truly,

JEZ/R

[fol. 4848]

W. R. Grace and Company Exhibit 69

icequake 84 from LAPAZ. dec 27th 1
9am

1 84:
2 chilian minister
3 negotiating with
4 bolivian government
5 secure contract
6 airplane
7 service
8 arica
9 lapaz
10 also
11 representative-s
12 LUFT
13 HANSA
14 in conjunction with
15 LLOYD
16 AEREO
17 AND CO-
18 NDOR
19 trying to contract
20 airmail for
21 europe
22 stop
23 in order to
24 block
25 these
26 negotiation-s
27 I have
28 interviewed
29 bolivian
30 president
31 informing
32 him
33 that on
34 visit.

35 Lima I
36 discussed with
37 pan american grace airways
38 possibility
39 extension
40 local
41 weekly service
42 taena
43 lapaz
44 president
45 very much interested
46 and
47 willing
48 arrange immediately
49 contract with
50 pan american grace airways
51 recommend you
52 take matter up with
53 pan american grace airways
54 and have
55 harris
56 fly to
57 lapaz

MR ROIG
MR ZALLES
MR PATCHIN
MR COGSWELL√

[fol. 4849]

W. R. Grace and Company Exhibit 70

[Handwritten notation—file—Harris—Aviation]

November 25, 1931.

MEMORANDUM FOR MR. IGLEHART:

ALTERNATE ROUTE TO BUENOS AIRES FROM ANTOFAGASTA VIA SALTA

The distance between Antofagasta and Buenos Aires via Santiago is 1455 miles—699 miles from Antofagasta to Santiago and 756 miles from Santiago to Buenos Aires. The distance from Antofagasta to Buenos Aires via Salta is approximately 1060 miles. The pass at Salta is five miles wide at a height of 15,000 feet, the highest peak being 19,000 feet. There is, therefore, no advantage in this respect over the route we now fly. The weather conditions, on the other hand, are more favorable due to the lack of rain and snow.

Mr. MacGregor and Mr. Harris have just surveyed the route between Antofagasta and Tucuman and are mailing report and possibility of one-day flight between Antofagasta and Buenos Aires. It would seem, however, as if the principal advantage of this route would be for use in emergency when the crossing at Santiago is blocked in the winter. So far as time is concerned, we can save a half day from our present two-day schedule between Antofagasta and Buenos Aires by spending the night at Mendoza, but this would be unsatisfactory from a point of view of passengers between Santiago and Buenos Aires.

The report of the flight of Mr. MacGregor and Mr. Harris will, of course, give us more accurate information than we now have. As they also flew to La Paz via La Quiaca and [fol. 4850] Oruro we will be in a position to judge of the practicability of a service from Arica to Buenos Aires via La Paz if we should have difficulty in operating through Chile.

/s/ WFC
W. F. Cogswell

[fol. 4851]

W. R. Grace and Company Exhibit 71

No. 203
(AG Trip Series)

W. R. GRACE & CO.
7 Hanover Square, New York

ORIGINAL LETTER
STEAMER COPY FOLLOWS

Air Mail 4.15
New York 4.19

A. Garni
VICE-PRES. & TREAS.

[Handwritten notation—Mr. Zalles]

LIMA, April 12, 1933.

[Stamp—Apr 20 1933]

Harold J. Roig, Esq.,
NEW YORK

Dear Roig:

ARICA/LA PAZ AIR SERVICE.

I attach hereto a copy of Guzman Tellez's letter of the 6th instant, together with a copy of my answer. You will appreciate, of course, that I merely submitted the matter to you at the time because Zalles, Guzman Tellez and I all happened to be on the Coast. Any further discussions will, of course, have to be carried on direct with New York, as in the first place I am not in a position to have a definite opinion, and in the second place, I want to keep our wires with reference to the supervision over Bolivia very clear.

My wife and daughter went to Paramonga yesterday, taking the plane at Las Palmas at 7 o'clock. The moment the plane took the air I went back to the hotel by motor and before I finished my coffee I had a telephone message at 8:05 that Altana and Adelaide had arrived at Paramonga. I don't believe that you have ever been in Paramonga, but when you visualize that the trip had to be made by train, leaving here at 9 A. M. and with good luck arriving at

Paramonga any time between 6 and 10 P. M., you will understand how impressed I was in finding that a passenger can get from Las Palmas to Paramonga practically as quickly as I could get back to Lima, including the getting of my breakfast.

There is no doubt but that travelling by air will eventually make a tremendous inroad into travelling by trains and steamers, and it is equally clear that the territory which we cover by air is in most parts ideal for the purpose.

[fol. 4852] I do not know just what it would cost us to run a shuttle service fro Arica to La Paz and possibly from La Paz back to Antofagasta, but if the service could be initiated and carry its expenses at the outset, I believe we ought to do something about it. In thinking about this there whole matter again I am wondering if ~~it~~ is not some way in which we could cut out the Buenos Aires/Montevideo run and apply the corresponding mail revenue to an Arica or Tacna/La Paz run. In this way the U. S. Government would not spend any more money than they are doing now and would extend the U. S. aerial activities to a new territory.

In view of the fact that I have never been very close to Panagra's detailed policy, it is possible that the above suggestion may look perfectly ridiculous, or that it has already been explored from every angle, but I could nevertheless not resist the temptation of writing you again on the subject, as I feel definitely that within a short time somebody will start an air service whereby La Paz can be reached more quickly from the two seaports, namely, Arica and Antofagasta.

Very truly yours,

/s/ A. Garni

Enclosures

[fol. 4853]

W. R. Grace and Company Exhibit 72

menter 5 to LAPAZ. dec 27th 1934.
745pm

1 5: your 84
2 41st to 53rd word

weekly service tacna lapaz president very much interested and willing arrange immediately contract with pan american grace airways recommend you take matter up with pan american grace airways

3 as we are
4 unable
5 reach
6 trippe
7 cannot get
8 immediate decision
9 panagra
10 but if necessary
11 t close
12 authorise you
13 do so
14 for account
15 W R Grace and Co
16 to be
17 turned over
18 to panagra
19 later
20 if they agree
21 otherwise
22 new company
23 to be
24 formed by
25 W R Grace and Co
26 contract to
27 be on

28 following basis sentence ends
29 weekly
30 mail service
31 lapaz
32 tacna
33 and return
34 to be
35 inaugurated
36 within six months
37 subject to our
38 obtaining
39 permission
40 peru and
41 subject
42 our right-s
43 change
44 connection
45 main line

[fol. 4854]

46 from
47 tacna
48 to other
49 point
50 in peru
51 or
52 chile
53 if we
54 later
55 find
56 more suitable
57 sentence ends company
58 operating
59 lapaz
60 tacna
61 service
62 to have
63 option for
64 one to
65 2 years
66 permitting
67 them

68 if they
69 later
70 see fit
71 to extend
72 operation-s
73 from lapaz
74 to peru
75 via
76 puno
77 or any
78 other point-s
79 on
80 peruvian
81 border
82 and/or
83 to chile
84 via oruro
85 uyuni
86 and
87 ollague
88 or any
89 other point-s
90 on the
91 chilean
92 border
93 and/or
94 to argentine
95 via
96 la quiaca
97 or any
98 other point-s
99 on the
[fol. 4855]
100 argentine
101 border
102 with
103 full
104 cabotaje
105 privilege-s
106 along
107 these
108 routes

109 even if not
110 extended to
111 adjoining
112 countries
113 sentence ends
114 time for
115 exercise
116 this
117 option
118 necessitated
119 for
120 survey of
121 routes
122 obtaining
123 concession-s
124 other countries
125 etc
126 all of which
127 will involve
128 considerable time
129 and expense-s
130 sentence ends
121 concession
132 to cover
133 local
134 and
135 international mail
136 passenger-s
137 express
138 and freight
139 over
140 all
141 routes
142 operated
143 and to
144 provide
145 assurance
146 government will not grant
147 other
148 concession-s
149 on same
150 or

[fol. 4856]
151 parallel
152 routes
153 during
154 period
155 our concession
156 which should be
157 not less than
158 10 years
159 sentence ends company
160 must have
161 right
162 select
163 own
164 personnel
165 erect
166 operate
167 radio station-s
168 at
169 suitable
170 point-s
171 and on
172 planes
173 also
174 permission
175 to use
176 any
177 government
178 civil
179 and
180 military
181 airport-s
182 without charge
183 and to
184 erect
185 hangar-s
186 and other
187 facilities
188 thereon
189 in addition to
190 right to

191 construct
192 its own
193 airport-s
194 where necessary
195 sentence ends we
196 understand you will
197 obtain
198 subsidy
199 1200 dollars us currency
200 monthly
201 for lapaz
202 tacna
203 service from
204 bolivian government

[fol. 4857]

205 and
206 banks
207 as stated
208 by
209 guzman tellez
210 this
211 subsidy
212 to be
213 transferable
214 to other
215 route
216 in
217 contingency
218 referring to words of this cable
219 43rd to 52nd word
220 sentence ends
221 if possible
222 submit
223 draft
224 contract for
225 our approval
226 before signing
227 54th to 57th word

have harris fly to lapaz

228 impossible

229 now as
230 he is
231 in new york
232 but
233 can arrange
234 someone else
235 make
236 flight
237 if
238 panagra
239 decide-s
240 operation
241 for their account
242 referring to words this cable
243 3rd to 9th word
244 hope to reply tomorrow
245 definitely

Mr. Roig.

[fol. 4858]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

DOCUMENTS

WRG 73 thru WRG 99

[fol. 4859]

W. R. Grace and Company Exhibit 73

NEW YORK,
February 2, 1935.

Mr. J. D. MacGregor,
SANTIAGO

In regard to the proposed Tacna/La Paz extension the whole program is being very carefully worked up in order that there may be no question by either Panair or Grace as to the completeness or the propriety of the proposed operation. Since all the details have not yet been put on paper it is not possible for me to forward them to you by this mail. However, the next mail should have your copy of the memorandum which I am going to submit early in the week to Mr. Trippe and Mr. Roig.

It is very possible that there will be some explosive happenings about Panagra operations this forthcoming week since apparently the Grace people are not very happy about the attitude that Panair have taken in failing to give any cooperation, suggestions, or assistance to the Panagra operations. I expect to have a conference with Mr. Roig about this on Monday, and if anything startling develops I will let you know at once, probably by cable.

Inquiry at the Hospital for Joint Diseases about Bobby's operation brought us the report this morning that he was resting comfortably. They tell us that the operation was entirely successful. Apparently everything is progressing satisfactorily, and he should be out of the hospital in the next couple of days.

/s/ H R H
H. R. Harris.

HRH:KW

[Handwritten notation—Air mail copy sent to La Paz.]

[fol. 4860]

W. R. Grace and Company Exhibit 74

Letter No. 15
(D. S. I. Trip series)

On board m/v "Santa Inez",
June 5, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

PAN AMERICAN GRACE AIRWAYS

I spent yesterday morning with Kirkland going over his plant and his problems. I was very favorably impressed with him, not only as a man, but also he impressed me as having a very good grasp of his task and to be dealing with it on very intelligent and broad lines. I was happy to see that he was working for Panagra heart and soul, and, although he seemed to be working in close harmony with the Pan American Airways management, that he was defending his own business very actively.

He seemed to think that he was having to spend a very considerable amount in maintenance, but he seems to think that he is getting his maintenance service from Pan American Airways as cheaply as he could supply it to himself. He thinks the principal cause of his high maintenance cost is the character of the plane that he has to use. He stated that the Sikorsky, though it seems to be as good as any amphibian that has been brought out, has very serious defects that make maintenance too high. He says that the annual general overhaul of the planes in Miami is very expensive but that this is due largely to the fact that the supply of parts by Sikorsky is a racket. He says that a part which should cost $25. costs $150. and that even small parts that should cost $5. or $10. are billed by Sikorsy at $50. or $60.; furthermore, that the general design of the plane as well as its detailed character makes necessary the replacement of a large number of parts at very frequent

intervals, and, that no amount of care prevents the wearing and exhaustion of these parts. This racket on parts is, of course, an established one with many manufacturers. I [fol. 4861] have noticed it particularly with the automobile manufacturers. There are a few of them who supply parts at reasonable prices and apparently Sikorsky are very serious offenders in this respect. I think you might have someone who is knowledgeable make a thorough study of all of these maintenance expense accounts; in fact, I think a very competent man might conceivably earn his way in Panagra studying analytically this whole question of maintenance of all our planes expense, ^ and that you might work out some plan under which when you buy any new planes you get an agreement on the price of all parts for a period of two or three years, and, that the price of these parts is checked up with the practical man to be sure that it is a reasonable one. Under normal conditions manufacturers might not agree to this, but today they are so anxious to get new business in units that I think they could be forced to agree to a big reduction in price on parts. I do not want to suggest any plan that means antagonizing Pan American, but I feel that in the same way that they are strengthening their ^ (i.e. Panagra) independent machine in South America in the administration of the business, you in New York should be strengthening your administrative machine independently of Pan American Airways, (Pan Amer. Airways,) ways. I think ~~Panagra~~ are probably improving their administration but what I have seen leads me to believe that it is still run on very extravagant lines and that it is quite out of step with our own ideas of economic industrial administration. Therefore, I think that you should try to arrange that MacGregor should have alongside of him a competent technical man who could independently check up on all maintenance expense and on the prices of all materials that are purchased, particularly in view of the fact, [fol. 4862] which Kirkland made clear to me, that we are now paying exorbitant prices for a lot of the material that we are buying for maintenance. This is true certainly regarding Sikorsky and it may be true with reference to the

Fairchilds, to the motors and Fords. This whole matter is one that deserves careful attention and I think you will find the means for getting MacGregor to put alongside of himself a man with sufficient technical knowledge to build up a check on technical work in the same way vidal has built up an independent control of accounts.

TRAFFIC

Kirkland feels that the Sikorskys with their limited capacity and their uncomfortable seating facilities and with their difficulty in getting off the water except with a limited load, make them an inadequate unit for a run between Panama and Ecuador. He showed me the figures and went over in some detail with me his traffic movement, and he is emphatic in the statement that he could double his movement over his route if he had a plane like a Ford instead of a Sikorsky. I have no way of verifying this estimate but he seems very intelligent and is handling his work pretty well, and I was rather impressed by his interest, on the one hand, and the fact that he is so convinced of the possibility of doubling his traffic, on the other. I asked him what plane he recommended in place of the Sikorsky and he said that he had two ideas, one of which was to put a Ford on pontoons. I asked him whether this had been done and he replied that it was being used successfully by the fire service in Canada. He said that it had never been experimented with much, but he felt that it was a perfectly feasible thing and that, if pontoons were properly designed and adjusted, the Ford would, in his opinion, be the best unit [fol. 4863] to adopt. To be sure he would have certain problems, as he would have to shift over to the Naval field at Panama and would have to provide some way of handling his plane in Guayaquil as the Ford would not be an amphibian but a sea plane.

The second idea that he had was a Douglas Amphibian which is made in California and has been in use for about a year. I went over to the Army hangars to see two which they have there and which they report are operating successfully. Kirkland did not like the engines but they could be equipped with Wasp engines. It is a monoplane with

the engine mounted above the wing and the fuselage below and the fuselage is quite a well-designed boat; in fact, as a boat it looks better designed than even the Commodore planes. It is much lighter than the Commodores and smaller and less capacity. It has seats I think for about six passengers and ample space for luggage. I believe the Army has had some difficulty with the shock absorbers on the tail gear but this was not serious and otherwise they report very favorably on the operation of these amphibians. Of course, I know nothing about airplanes and have no right to an opinion, but, after going over a detailed explanation of the qualities and problems of each plane, I was rather well impressed with the looks of the Douglas plane and feel inclined to suggest that you should have someone look into these planes carefully. In this connection again an independent technical man would be invaluable to you for, as we know, the people who are running the Pan American Airways have close connections and interests with plane manufacturers and this means that any technical opinion that you get on this subject may be colored by this interest; in [fol. 4864] fact, it is perfectly natural that it should be and there is no way to avoid this color. I saw a Commodore and went over it carefully, and, although it seems to be a good practical well-designed plane, it is too heavy for its power and is consequently too slow to be practical of adoption by us.

To make a practical suggestion, I would be inclined to pull out some man like Shannon or like Kirkland and bring him up to New York as assistant to MacGregor. To be sure the logical man to be in New York would be Harris, but he is too urgently needed at this end of the business at present. I fancy that either Shannon or Kirkland might be spared by picking out one of the good men down the line to replace him. I will be able, after I have seen more of the men in the field, to have a little clearer opinion as to their character. However you and MacGregor probably know all of the men already fairly well and you will probably be able to decide out of hand which man from the Coast would be most suitable to bring to New York as MacGregor's assistant on technical matters. The man whom you select you can gradually build up in your policies and he would be on hand

to send out to replace Harris later on should the time come when you want to bring Harris to New York. That time may be some distance ahead, but I think it important to be building up a man of your own who might in an emergency replace Harris and I think whoever you select to go to New York should be your man of outstanding ability in order that you may mold him into a future chief. Kirkland is a Navy man and I don't know just how far his ability extends. I should think that he may possibly be limited, although he impressed me as being very intelligent as well as having a good deal of commercial sense.

Very truly yours,

[fol. 4865]

W. R. Grace and Company Exhibit 75

VIA
CORREO AEREO
PANAGRA

[Handwritten notation—Recd 7/6/32 ans'd 7/8/32]

Letter No. 61
(D.S.I. Trip series)

En route Valparaiso
On board s/s "Boskoop",
June 27th, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

I received your various letters at Antofagasta this morning.

Your #4—Panagra Equipment for Northern Division

Without expressing any opinion as to the superiority of the Douglas plane over the Sikorsky as far as comfort or security in operation are concerned, I got the impression

that the maintenance problem would be greatly simplified due to the fact that the motors are far enough from the water to avoid splashing from the water and tearing up the propellers in the way that is being done by the Sikorskys; in fact, I think the big problem of the maintenance of the Sikorskys is the proximity of the motor and the propeller to the water. In this respect at least the Douglas is a great improvement.

Regarding the advisability of considering the Ford on floats, as you say that would involve boat operation rather than amphibian and this today offers certain practical problems. On the other hand, I feel that as far as passenger traffic is concerned this leg of our service is the neck of the bottle and that we would get more way traffic as well as more through traffic if we had enough available capacity to permit us to go out and look for passengers on the northern range in the way that we are doing on the other ranges.

INDEPENDENT TECHNICAL MAN IN NEW YORK

I quite appreciate that Trippe would object to this, but, after all, it is only doing in New York what they are doing on the Coast in maintaining an independent traffic man. I agree with you, however, absolutely that we must do nothing that will make more difficult the problem of keeping our organization and that of Panagra working as a unit [fol. 4866] on the Coast and of getting from New York the support that you are getting from MacGregor to bring this about.

Quite apart from the question of the amount of money that the Grace Organization on the Coast can make out of Panagra, I consider that it is vital to the progress and success of Panagra that the great mass of combined influence of all of our offices and of our men all along the line should be making its full daily contribution, and only by keeping this all working in the very closest harmony will the enterprise get the benefit to which it is entitled through the Grace Organization. As I travel along the thing that impresses me most is the splendid efficiency of our men all along the whole range and I am similarly im-

pressed with the character of the technical men who are handling the operation of Panagra. The daily collaboration and the unity of effort between these two elements is the thing that has made Panagra what it is and that is the thing that is going to continue its success and eventually make a great big enterprise out of it. Therefore, any step that you take in the direction that I have indicated must be taken with great tact and I think the time will come when you will be able to take the step in the form of promoting a very competent technical man to New York to be MacGregor's assistant, and this move would have to come from MacGregor and in a natural and constructive spirit.

ECONOMIES

I am very interested in receiving your letter #5 and seeing that you are exercising the steady pressure that is necessary to bring and keep our expense account in line with our turnover and in making economies that are so necessary in order to accomplish this.

[fol. 4867]

BANK

Your No 6 is very interesting and it is a source of great comfort to me to know that you are in daily touch with McKnight and watching the Bank's position in such a way as to assure the satisfactory management of that business.

AIRMAIL TUMACO—Your No 7

If I were you I would get directly in correspondence with Harper regarding this and get his views as to what he considers he will be able to accomplish and how he proposes to go about doing it. You then can decide whether anything would be gained by taking the matter up with Trippe. In accordance with our general understanding with Trippe, Panagra was to operate on the whole West Coast of South America and across to Buenos Aires and, I think, Montevideo. The operating by them of a service from Buenaventura to Tumaco is not compatible with this arrangement and, as I do not think that Scadta can possibly be making

anything out of this service, it would seem a very natural thing for them to retire from it; in fact, I think we really have a right to ask them to retire, particularly if they suffer no prejudice by doing so.

PANAGRA—Your #9

I take it you have sent a copy of your letter to Marshall to Harper and will in future correspond with him. The seating capacity in those planes is not the limit. The real limit is the weight with which the planes can get off the water. I am not sure but my impression is that if the water is still and there is no wind, these Sikorskys cannot possibly get off the water with all the seats occupied. In considering the capacity of these planes Marshall considered not the number of seats that were in the planes, but the risk of filling [fol. 4868] all the seats and finding it impossible to carry the passengers that he had booked. It is in view of this condition that he said to me that he was not looking for passengers for Panagra. He said the planes usually came up from the South with as much weight as they could handle provided conditions of water and wind were unfavorable. What I am trying to do is to get in a position where we will have enough capacity so that Marshall and our people in Bogota and all along the line are hustling for passengers for the planes just as they are for the steamers.

Regarding the suggestion that the United Aircraft make of our joining with them in designing a special plane for this service, I feel that if we could put a considerably more powerful motor in the Douglas plane it would have a greater real capacity than the Sikorsky. In comparing these two planes I was rather impressed with the fact that the fuselage of the Douglas was more like a boat and would probably land and take off better than the Sikorsky. This, however, is just a sort of a hunch that I got from comparing the bodies of the two planes looking at them as boats rather than as airplanes.

BUENAVENTURA—Your #10

We now have a House in Colombia and Harper is, I think, a careful man. Buenaventura has a large movement

and is going to become a very important port. At present it is just a mud hole and I think that, from the standpoint of the Colombian Government, they are quite justified in using some of the income of that port to make it a place in which the people who are responsible for the port can live. I think the most serious danger is the putting of a port in the hands of foreigners and I think that it is quite [fol. 4869] conceivable that we might lose as much in prejudice on this account as we might gain in benefit to our steamers through an effective control of the port. I always think that the men on the spot are the men who are the best judges of this and, if, after Harper has been thoroughly warned regarding these points, he still recommends our going into the thing and if you and Garni and J. P. Grace agree to it, then I would come along. I do not, however, feel strongly enough about it to support the idea unless it had the approval of my associates.

Very truly yours,

(Sgd.) D. S. IGLEHART

[fol. 4870]

W. R. GRACE AND COMPANY EXHIBIT 76

Letter No. 30
(H.J.R. Series)

Airmail 4/20/35
Santiago 4/27/35

New York, April 18, 1935

Harold J. Roig, Esq.,
Santiago, Chile.

Dear Roig,

Garni is in Washington with Cogswell, Trippe, etc. for a hearing with Hewes regarding the matter of reducing the rates that Panagra is receiving.

Patchin and Cogswell attended the last meeting but we felt, and Garni did also, that he ought to get his hand into this very important matter. My feeling is that we should be willing to accept a reasonable reduction, say about 10%, provided it was horizontal and applied to all foreign airways in the same ratio. I rather felt that Garni could convince Howes that it would be eminently unfair to reduce our subsidy in a larger ratio than the others merely because we had handled our business well and more profitably than others. All the arguments have been marshalled, and our idea is that we will probably have to get Clark's help in the matter.

It is refreshing to see how Panagra matters on the coast all began to move the moment that you arrived there. There is a Spanish proverb which says "El ojo del amo engorda el cabello".

ECUADOREAN LAWYER

I feel, and I think Garni will feel after seeing all of your explanations, that you did very well in employing Dr. Ponce and that he will be an invaluable help in handling important matters that are continually coming up with reference to Panagra.

CHILEAN CABOTAJE

I felt a little hesitant about having you pass a written memorandum to the LAN because these written memoranda, although not signed, always bind us but don't bind the other fellow, and they are so often used merely as a [fol. 4871] basis for trading by the other man. I do not know just what plan you are following with LAN but with reference to that negotiation my general feeling is that in practice you will not obtain a satisfactory arrangement with LAN unless you bring to bear a criollo influence of a very influential character. My knowledge of Merino rather leads me to think that it is going to be a very difficult and perhaps quite an impossible task to come to terms with him and his group in any direct dealings between you and them and that other very carefully selected influences will in all probability be necessary in order to bring about results.

I am not sure that Juivaedo or Dagnino agree in this theory but at any rate that has been my own experience in negotiations of this character in Santiago. Two years ago I suggested the idea of getting Francisco Echenique to undertake this task for us and at the time I was convinced that he could have accomplished it. We would have had to compensate him in some satisfactory way but he was so close to the Government and to all the Chilean aviation influences that I am satisfied that there was a very fair chance that he might have pulled the trick. Since that time he has been working very closely with the Chilean/Argentine/Peruvian and Bolivian Governments and has done a business in airplanes which has made quite a fortune for him. I do not know whether he is still available to undertake this task as I got a cable from him saying that he was thinking of coming up to play polo at Meadow Brook during this season, but even if he remains in Chile I do not know whether he would still feel that he was able to undertake this task or whether it would be practicable to have him do so as I don't think that he and Valverde are particularly friendly.

The second suggestion I made was that we should retain one of the President's sons, who is I believe the lawyer of [fol. 4872] LAN, and who is a lawyer of so high a category that it appeared to me that we might be justified in retaining him without running any risk of being accused of using undue influence with the government. Valverde turned down this idea also and he may have been right in doing so. Now whether you use one of these media or some other I rather feel that you are likely to need assistance of this general en route to help you perform this difficult task. Bulnes is an excellent lawyer, highly respected but lethargic, inclined to be timid, and I think not too effective.

Now these observations I make to you are more or less a shot in the air and they may be of no value to you whatever but I throw them out to you on the chance that they may be of some use.

BUENOS AIRES

I was delighted to hear that you were going over there. In the competition which now exists and will become more accentuated in the future, B.A. is really a key point and although it may cost Panagra a little money to have a first-class man of their own in this point, I think that in the long run it will be money well invested.

NORTHERN EQUIPMENT

I ran into Sonny Whitney day before yesterday at the Racquet Club and had a long talk with him. He has been out in Hawaii and is immersed in this whole eastern question, as Trippe is also. I explained to him that for two years we have been trying to get Trippe to agree to putting adequate equipment on the northern section and that Trippe had stalled because he wanted to fly his Clippers down our coast as far as Guayaquil or Talara. I explained that we were not going to accept this plan and made clear to him that we were losing a lot of business and losing ground generally due to Trippe's failure to agree to our acquiring equipment. Whitney said he was delighted to hear that we [fol. 4873] needed equipment and that he thought we ought to get it as soon as possible and promised to talk to Trippe about it. Whether anything will come of this I do not know. Garni is seeing Clark in the next few days to discuss the matter from another standpoint as I feel that we must put some pressure on Trippe to get a prompt settlement of this and other pending questions.

If we can get a Sikorsky promptly it would undoubtedly be the best solution. If we cannot, then I think we ought to make an effort to fly that northern section with a Douglas plane. I am asking Campbell to look thoroughly into the plan they have for putting buoyant bags on the Douglases so that they will remain afloat under any conditions. If that plan looks practicable then my idea would be to have Campbell and Allen see Lindberg and see what he thinks about it.

Knowing the character of the waters of the Caribbean and of those between Panama and Buenaventura, and know-

ing that during nine months of the year the Caribbean is an extremely rough piece of water and that apart from tropical showers the weather between Panama and Guayaquil is almost always favorable, I would rather be a passenger in a Douglas plane south of Panama, provided it was made buoyant, than I would be in a Clipper crossing the Caribbean. I have talked over the matter of the Clipper boats with two or three people here, and the impression I got is that they absolutely must not land in rough water and that if they did they would certainly not be able to rise from it.

The more I think of this northern equipment the more I lean to meeting the situation now and trying to work out a scheme of flying that section with land planes. All that we would need to do would be to find two or three emergency fields and I think we should start an immediate survey to see if we cannot locate sites for them. Campbell tells me that there is an army field 150 miles south of Panama on [fol. 4874] the Pacific side and from there there is a 300 mile hop to Cali. If we could find between these two places two or even one emergency fields, then I fancy that flight might be made perfectly safely with a land plane. The survey would have to continue south of Cali to see whether we could locate some emergency landing places which I myself believe exist although I have only very general evidence to support the theory. In a word, my feeling is that if we could get an S-43 plane promptly, then that is the solution. If we cannot, then I would make a hard stab at flying that northern section with land planes. I am convinced that we will eventually fly it with land planes and I feel that we would be making a very long step forward if we could find a means of doing it now.

MANAGEMENT

I suggested to Garni the idea of sending Vidal to the coast and putting Campbell in his place for the reason that in the first place I think Vidal is the most competent man connected with Panagra for the extremely important task that you have in view. Our efforts over a period to control or even to understand expenses and get a proper analysis

of them here have been relatively futile, and the future success of Panagra would require a man with the mind of a merchant, alongside of men of the type of Harris, Kirkland, etc. if we are going to really manage that business on sound commercial lines.

Regarding replacing Vidal, my idea of suggesting Campbell is that I think Campbell has the ability to be the future head of Panagra. I think he understands enough about accounting to direct the control work and has certainly had enough commercial experience in his eight years at Cartavio to look at problems from a commercial standpoint, and in addition has a knowledge of aviation which he is increasing daily, and is of the type of man who I believe [fol. 4875] might get the complete confidence of men like Priester and others and even the confidence of Trippe. The latter is going to be terribly busy with bigger schemes in the next year or two and if we had as the head of Panagra a man that he trusted, it is just conceivable that he would allow him to run the business. In other words, Campbell would replace Vidal, have a really good young accountant and comptroller alongside of him, and would replace MacGregor as soon as he got hold. I rather feel that we ought to push into Panagra two or three young men of commercial experience and of good quality—men who would be training up here to take a post such as you have in B.A., or to go down to become assistant to Vidal. I am going to talk over with Holloway the matter of selecting one or two of these young men and a plan for training them.

Yours very truly,

D. S. Iglehart
(Dictated but not read)

[fol. 4876]

W. R. GRACE AND COMPANY EXHIBIT 77

W. R. GRACE & CO.
NEW YORK

[Handwritten notation—Recd 6/16/32]

Letter No 19
(D.S.I. Trip series)

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Buenaventura
On board m/v "Santa Inez",
June 6, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

PANAGRA

Following up my letter #15, I have talked over the situation in Buenaventura with Marshall. He says that he believes that he could get an important number of passengers for the trip north from here to Panama, but that the planes cannot accommodate them for they usually come up from the south with as much of a load as they can handle. When there is no wind and the sea is smooth they are finding a good deal of difficulty in getting off the water, and, although now and then they are able to take passengers from here, Marshall says that as a rule there is no certainty of being able to accommodate anyone. This brings out again I think, and perhaps a little more clearly, the fact that as far as through traffic is concerned the Sikorskys are the neck of the bottle, and I believe that we should set someone to work on this problem to see whether we cannot get a capacity on this northern run which is comparable with that on the other runs and that we should prepare ourselves to handle the traffic that is offering or that could be obtained by adequate solicitation. If we continue with

the present inadequate service I think we are likely to have Scadta in competition with us on this run, and I think this should be avoided; furthermore, I feel that we should keep facilities a little bit in advance of traffic requirements and must make steady progress in building up our movement. The years pass by quickly and we must build up a movement that will put this business pretty firmly on its feet before our present mail contracts expire.

Very truly yours,

/s/ D. S. IGLEHART

[fol. 4877]

W. R. GRACE AND COMPANY EXHIBIT 78

(Letterhead of Pan American Grace Airways, Inc., New York City)

H.R.H. series #68.

[Stamp—Received Feb 12 1930]

[Handwritten notation— HRH #261—March 5—1930]

LIMA,
February 11th, 1930.

Pan American Grace Airways Inc.,
NEW YORK.

Dear Sirs,

Receipt is acknowledged of your letter #152 H.R.H. series. I have delayed answering this pending a report from our attorneys who have submitted a preliminary report saying that the laws are now being reworked in Congress and they do not think we are justified in taking any action pending the final definition of the law.

Receipt is acknowledged of your letter #205 H.R.H. series. As I have already informed you I propose to arrange to have the same powers as I possess to be held by a Grace apoderado in each country in which we are operating with the possible exception of the Argentine and Uruguay. I have already substituted my power of attorney to Mr. von

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Linde and will substitute to Mr. Rebstock as soon as I go to the Canal Zone. The only powers I possess at the present time are for the Canal Zone, Republic of Panama, Republic of Peru and Republic of Ecuador, all the above in the name of the Pan American Grace Airways Inc. and a power for Peru in the name of the Peruvian Airways Corporation. The Ecuadorian and Peruvian powers are limited to $5,000.00.

Receipt is acknowledged of your letter #206. Please do not blame Mr. van Law for the arrangement for taking Colombian mail in Buenaventura and Tumaco—this was done by him on my instructions based upon a report from Willcox and an understanding which I had with Mr. von Bauer that mail secured by us in Buenaventura and Tumaco would not be considered by them as an infringement of [Vol. 4878] their rights in Colombia. If Dr. von Bauer is still in New York I suggest that you take up the matter with him reminding him that this was a verbal understanding with him in view of the verbal agreement which he and I made whereby Pan American Grace Airways would carry Scadta mail from Colombia as far as Arequipa and Mollendo for onward despatch from these points by train or steamer to Bolivia, Argentine and Chile.

By next mail I expect to report the progress I have made on the rearrangement of the postal rates with the Marconi Company in Peru.

Receipt is acknowledged of copy of memorandum from Mr. Priester to Mr. MacGregor dated January 17th. stating that Mr. Priester believes that I should decide between a Fokker Super-Universal and a Curtiss Kingbird. My own impression is that we should purchase another Fairchild in view of the points which we have previously exchanged by letters and cables. Second choice would be a Fokker Supe Universal.

It is expected that the Santa Mariana will be back in first class condition by approximately March 1st. The plane was returned to Lima after temporary repairs on the field. In this connection I believe that we should have available at all times here at least one spare Ford in addition to those

in operation on our lines or else we should give up the use of Fords in favour of an airplane similar to the Fokker F-10 which can be easily, cheaply and quickly repaired in the field with spares which are easily kept in stock and do not require special ordering from the United States. It is very probably true that in final analysis the Ford depreciation rate will be less than a construction of the Fokker type but a question of quick repair with a minimum of investment in spare parts particularly when considering the distance from source of supply would indicate that we might well carry on our operations with welded steel fusilages with veneer or fabric covered wings.

[fol. 4879] Your attention is called to your H.R.H. series letter #181 last paragraph. Upon my arrival in Lima I have been shown a Westinghouse Catalogue #250 showing B-10 electric furnace which would seem exactly suitable for our work in heat treating Ford rivets. I had previously been informed by you that it was necessary to have a furnace built for this work. Unfortunately the price of the B-10 furnace is higher than we would seem to be justified in paying for the relatively small amount of work which this equipment would be called upon to do but I do not believe that it will be necessary for us to have a special furnace designed and built at such time as we decide that we do require this type of equipment.

I am enclosing copy of envelope and paper furnished gratis to large business houses by the Latecoere Co. As I understand it this gratis distribution is carried on for approximately thirty days after the opening of new lines, after which period they sell the paper at approximately cost. I suggest that we obtain quotations on similar stationery for similar use by us.

My present program calls for my completing arrangements with the Peruvian Government for the installation by us of passenger stations, ~~and various~~ hangars and other buildings at various points in Peru and in addition to complete with arrangement with the marconi Company for new air mail rates.

I am having breakfast with Mr. Culbertson tomorrow morning and will discuss with him at that time the desir-

ability of my proceeding to Santiago upon his arrival there. However, I do not think that this will be necessary in view of the excellent representation we have in Messrs. Metzner, Heavy and Dagnino of the Grace Company. I propose to [fol. 4880] proceed to the Canal Zone upon completion of the work I have outlined in Peru in order to put the Cristobal/Guayaquil run on a more satisfactory basis as regards operation by ourselves is concerned. It would appear from information which I have from the Canal Zone that we are not securing as complete service and attention from the P.A.A. as we might desire. However, I am unable to definitely make this statement until I have investigated the matter further.

With regard to the actual shop equipment which will be required in Lima and Montevideo, this problem is being studied and definite plans will be submitted to you as soon as possible.

Yours very truly,

Pan American Grace Airways Inc.,

/s/ H. R. Harris
Vice President.

HRH/h.

copy to Mr. MacGregor,
Mr. Hoyt
Mr. Trippe
Mr. Cogswell
Mr. Patchin.

[fol. 4881]

W. R. Grace and Company Exhibit 79

#533

Pan American Grace Airways, Inc.

LIMA, January 22, 1931 #252

Mr. MacGregor, New York
CHARTER OF SIKORSKY 306-N

I am sorry that you did not give me the details of the charter of Sikorsky 306-N. These details are now at hand

in a copy of your private letter #74 which you sent to Cristobal. I must confess that I have yet to see the instance where Panair has erred on the side of generosity with regard to any equipment which we have secured from them.

/s/ H. R. Harris

HRH/CBR

[fol. 4882]

W. R. Grace and Company Exhibit 80

(Letterhead of Pan American-Grace Airways, Inc., New York, N. Y.)

[Handwritten notation—JDM—HRH #1165—4/14/33—BA/Montevideo Operations—P-3 Accident]

Cable Address #549

Letter No. 1362
(to be furnished later by Mr. Large)

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY SECOND AIRMAIL

YOUR LETTER NO.

[Stamp—Received by Airmail—Apr 13 1933—Pan American-Grace Airways, Inc.]

Cristobal, April 8, 1933.

Mr. J. D. MacGregor,
Vice President & General Manager,
Pan American-Grace Airways, Inc.,
New York, N. Y.

Dear Mac:

Receipt is acknowledged of your Personal 1130 of March 27th, on the subject of Buenos Aires-Montevideo operations.

The first page of your letter has been covered in previous correspondence, and I sincerely trust that you will be able to arrange to station one of our Sikorskys for

the Buenos Aires-Montevideo operation, at least during the winter.

With regard to page 2, I believe that the possibility of trouble in connection with the P-3 accident is not particularly acute, since it would appear that Alurralde and Shannon have been able to get the necessary information before the proper people in order to quiet any outcry by our Buenos Aires newspaper friends. In this connection, I understand that one of the Panair officials who was in Buenos Aires at the time of the accident (apparently de Kuzmik) made very little effort to hide his belief that the accident occurred as result of our authorizing them to do an unsatisfactory repair job. I suggest that this be called to the attention of George Rihl for quiet investigation, since I am getting damned tired of hearing Panair say what lousy organization Panagra is, particularly with regard to maintenance and repair. I used to be somewhat impressed by their self advertising in this connection, but after seeing the condition of the Ford they sold us, which they claimed was in first-class condition, and also the condition of the motors in that Ford and the other motors which they have overhauled for us, my impression is that [fol. 4883] ~~Panair is that~~ Panair had better come down and learn how to do things from Panagra, and not make wisecracks like that made by the Panair inspector in regard to the carburetor of one of the motors installed in one of the new Sikorskys at the factory, the history of which carburetor is still being investigated.

I am not ready to state that it did not come from Lima on the last carburetor overhaul, but I am ready to say there is no justification in the inspector's remarks that "this is another example of the bum Lima maintenance", which remark I understand was made at the Sikorsky factory, and by which you are possibly puzzled.

/s/ H. R. Harris
H. R. Harris

HRH AW

PS: Since writing the above I have just read Kirkland's #1251—Private addressed to Sago, dated April 7th, on

the subject of the carburetor mentioned above, where it is definitely determined that this carburetor was last overhauled by Panair and was never out of Panair's possession up to the time it was shipped to the Sikorsky factory for installation.

(initialed) HRH

[fol. 4884]

W. R. GRACE AND COMPANY EXHIBIT 81

PERSONAL 1634

NEW EQUIPMENT

HRH/FL

LIMA, October 27, 1933.

Mr. J. D. MacGregor, New York.

Your personal #1393 (Oct. 19):

This is a most interesting letter and has so much meat in it that I shall cover the points that I see in it which require, or seem to require, comment from me page by page.

I am interested to note that the maximum number of the small Sikorsky amphibions (by "small" I mean the S-43) which could be absorbed by the entire Panair System under the present conditions would be five to six, and that in view of the small number and the increased cost due to this small number and the NRA price raising arrangement, we would have to pay $120,000 USCy. apiece for such of these amphibions as we desired for Panagra. Also, of course, we would have a very long delay in getting delivery on this sort of new aircraft should be try to purchase them, although you don't mention this extremely important point.

It is interesting to note that Mr. Trippe anticipates a heavy increase in mail and express service, in addition to an increase in the free baggage allowance to each passenger. I am glad that this is recognized and accepted in principle, since I feel that the increase in free baggage weight for our passengers is a necessary and logical move in the near future, and that we should up our present 15, 20 and 25 kilos baggage limits by ten kilos each.

COMPARATIVE DATA

	SIKORSKY S-38 AMPHIBIAN	CONSOLIDATED "CONSODORE"	S-43 No. 1 RIG.	S-43 SUPPLEMENT
ENGINES	2-(7:1)WASPS	2-(7:1) HORNETS	2-(5:2) SIRIC	2- (DD) HORNET
TOTAL SEA-LEVEL POWER	850 HP.	1,150 HP.	1100 HP.	1240 HP.
GROSS WEIGHT	10,480 LBS.	27,600 LBS.	15,847 LBS.	16,115 LBS.
USEFUL LOAD	3,980 "	7,100 "	6,900 "	7,066 "
FULL LOAD OF FUEL TO GIVE RANGE OF S-38	1,980 "	2,604 "	1,788 "	1,968 "
CORRESPONDING FULL LOAD OF OIL	180 "	245 "	190 "	200 "
RADIO EQUIPT. & CREW	427 "	597 "	597	597
PAYLOAD	1,405 "	3,654 "	4,325 "	4,301 "
WING LOADING	14.3 LBS/FT.^{2}	15.8 LBS/FT.^{2}	19.40 LBS/FT.^{2}	19.73 LBS/FT.^{2}
POWER LOADING	12.3 #/HP.	15.3 #/HP.	14.40 #/HP.	13.00 #/HP.
SEA-LEVEL RATE-OF CLIMB	745 FT./MIN.	600 FT./MIN.	925 FT.	945 FT.
MAXIMUM SPEED AT SEA LEVEL	125 MPH.	125 MPH.	162.0 MPH.	163.3 MPH.
CRUISING SPEED- 75% HP.	112.0 MPH.	112.5 MPH	1458 "	150.0 "
FUEL CONSUMPTION	52 GALS./HR.	70 GALS./HR.	69 GALS./HR.	78 GALS./HR.
ENDURANCE	6.3 HOURS	6.2 HOURS	4.52 HOURS	4.2 HOURS
RANGE	690 MILES	690 MILES	690 MILES	690 MILES
MILES PER LB. OF FUEL	0.52	0.54	0.398	0.320

LIMA, October 27th, 1933.

With regard to Mr. Trippe's idea about our chartering a Clipper for the service between Cristobal and Guayaquil, rather than investing $250,000 in building two planes of our own, it is, of course, impossible for me to give this any accurate study until I know what charter rate we would have to pay and also the cruising performance in speed [fol. 4886] and gasoline consumption of this S-42, as well as the actual payload available for the non-stop distances involved in our flights over this route. Incidentally, Mr. Trippe's idea would undoubtedly cause us some difficulty at times, in that any delay by Panair due to hurricanes, motor trouble etc. would make it impossible for us to commence our schedule out of the Canal Zone within twenty four hours of its scheduled departure, since we would have no high-speed aircraft to carry out our own departure. F.A.M. 9, of course, is not dependent directly for its subsidy payments upon the arrival in the Canal Zone of Panair plane from Miami, and I feel that we must, to the extent of securing our subsidy payments, look out for our own interests as best we can, rather than have to cancel an entire trip for our 4,551 miles because the Panair Miami plane does not arrive in Cristobal.

In connection with making Guayaquil the overnight stop, you will already have noted that by Cristobal's SAGO #1775 (Oct. 5) to me on the subject of Cristobal/Talara one-day service, Cristobal feel it is perfectly feasible to operate from Cristobal to Talara in one day with our present Sikorsky S-38's. I can see, therefore, no reason why we should operate only Cristobal/Guayaquil if we have higher-speed equipment than our S-38's. From present indications it may be possible for us to put in a combined land- and seaplane base at Talara, and some of the seaplane pilots have informed me that Talara will be satisfactory for flying boat operations, even though it was unsatisfactory for our Fairchild on floats, since the flying boats will stand the fairly rough water outside the Talara harbor if, it ever becomes necessary for them to have such a long take-off. It is expected that the flying boats will be in the air long before they reach the open water, however, which was of

course not true with our loaded Fairchild on floats. Perhaps the installation of a joint land- and seaplane base at Talara will involve more of an expenditure than a similar joint land- and seaplane base at Guayaquil. This, of course, remains to be seen and is now being actively studied; at least as far as Talara is concerned; I hope to have some additional constructive information for you in the airmail leaving here a week from today with regard to Talara possibilities. Talara, of course, has the very great advantage of the tremendous International Petroleum shops there to handle any special work that could not be handled by the fairly complete overhaul and repair shop that I would plan to put in at any joint land- and seaplane base which we might decide to install. On the other hand Talara has the disadvantage of having no reasonable hotel facilities such as are available at Guayaquil, and we would presumably have to put in our own hotel accommodations for our passengers if Talara was the overnight stop.

as Kirkland

I am afraid I cannot get as enthusiastic about the possible number of passengers that might be available for a 26-passenger plane between Cristobal and Guayaquil. Whereas by reducing our tariffs somewhat we might fill this plane to a reasonable percentage between Cristobal and Buenaventura, I feel that south of Buenaventura we would never have more than an average of seven passengers, unless we materially reduced our present tariffs. Tumaco is, of course, an interesting possibility in connection with the possible Buenaventura movement, but after all [fol. 4887] Tumaco is a relatively small place and the road which is now being built to connect Cali with Pasto will undoubtedly carry a good deal of the interior traffic which now has to come down to the coast to get to Cali. It is quite right that we have a continuous flow of Company personnel; up to the present time we have had very few cases of Company personnel being held over at either end of the line, or in the middle, because of lack of space in our Sikorskys (S-38's). However, that situation is gradually becoming more difficult because of increased movement of our Company personnel and also because of increased

In order to make a study of existing and prospective planes for our Cristobal/Guayaquil and/or Talara run, I have had the attached comparative figures put on one sheet. Unfortunately I have here absolutely no data about the S-42, which is, I presume, the Clipper that you refer to in your letter, although as you recall the S-40 is also called the Clipper; the S-40 is, from reports I have had from the operating people of Panair, so unsatisfactory in almost all respects that it seems not worthwhile to attempt to make any comparison at this time with the S-40. In order to make my comparative table more complete and thus enable me to revise my ideas, if necessary, I request that you secure the complete performance calculations of the S-42 and/or the flight test information, if flight test has already taken place, in order that I can make additional figures.

The attached table shows some very interesting things. The S-38 figures and the Commodore figures are from the performance of these aircraft without controllable propellers. As you know, we now have controllables on our S-38's and find that our cruising speed at 75% BHP is somewhat in excess of the 112 mph. shown in the attached data as cruising speed of the S-38, and it is to be presumed that the Commodore would also show an increased cruising speed with controllable propellers. Also the Commodore [fol. 4885] figures as given are for the Commodore as furnished NYRBA and which Panair are now operating; these planes have the engines between the wings. As you probably already know, Panair are planning to change over all of these Commodores to install engines in the entering edge of the top wing, which I understand will increase the cruising speed by about 5mph., irrespective or not of whether they put on the controllable propellers. The additional cost of changing the engines I understand will amount to about $5,000 USCy. per plane. I should imagine that in studying the matter we would be safe in assuming a cruising speed for the Commodores with the new engine location of 115 mph.

You will note from the tabulations given herewith that the comparison between these four airplanes (two existing planes and the two S-43 proposals which seem to me to be

most satisfactory for our service) that they are all based on the same miles flight range for purposes of this table, thus assuring equal comparison as regards payload. On this basis we find that the best S-43 has only 671# more payload than the Commodore, or approximately four passengers. The S-43 has, of course, the advantage of approximately 30 mph. increase in cruising speed, and is more economical by a good deal for gasoline consumed per mile flown.

According to your letter Panair has a firm contract with Sikorsky for the construction of several Clippers, presumably the S-42's. Presumably some, if not all, of these S-42's will be used to replace the present Commodores now being operated by Panair, in view of the necessity Panair finds of speeding up their east coast service in order to give reasonable flight time in comparison with our west coast service to B.Aries. I believe therefore that we might purchase from Panair two, or perhaps three, of these used Commodores, have them rebuilt by Panair, or by our own organization here in Lima, (preferably by Panair), have the motor mounts put into the entering edge of the top wing and controllable propellers installed. We would require new Hornet motors for these planes, together with four spare Hornet engines, two spare propellers complete, and also two spare sets of propeller blades without hubs. I believe that two Commodores would be enough, because our present S-38's (having the same approximate cruising speed) could be used as standby and emergency planes to replace the Commodores at such time as they had to be overhauled. This emergency-plane arrangement to replace planes under overhaul would be much more difficult to secure at reasonable expense if we went into higher speed equipment (such as the S-42 from Panair will presumably be), because our entire schedule would be radically interfered with during the time when such planes were undergoing overhaul, provided we had only two of the high speed planes, unless we chartered during that overhaul period an additional high-speed plane of the same type from Panair, and as you recall our experience with Panair on chartering airplanes from them has been anything but happy, at least from the financial standpoint.

cash business. However, I don't see any movement which would justify our putting in a 26-passenger plane of the S-42 type.

If our line is to depend, as it possibly may in the near future, for its income only on its passenger and other payload with a curtailment or complete loss of U.S. mail subsidy, we might then find it necessary or desirable to secure really large passenger airplanes, either through purchase or charter. But in the meantime I believe we are better advised to purchase the Commodores, which are much less costly to purchase in the first place as well as being less costly to operate during the period when we don't have an overwhelming passenger demand. In connection with the cost of the Commodores I have written Laddon of the Consolidated outfit to secure from him an unofficial estimate of what brand-new Commodores, of the type Panair now own, would cost us. Laddon told me when I was at the factory that he could let us have these very cheaply, inasmuch as they were all tooled for manufacture of these planes, both from their NYRBA contract and also from the great many planes of this type they had furnished the U.S. Navy; you will recall that these are the planes which recently made the non-stop flight from Newport News to Cristobal and from Cristobal one-stop to San Diego with much marked success by Naval pilots. My estimate is that we ought to be able to purchase new Commodores from the factory for about $60/65,000 each.

With regard to Mr. Trippe's explanation that it will be almost impossible for Panair to operate between Miami and Cristobal with the Clipper in less than two days, I am indeed amazed! It would seem from this remark that Mr. Trippe does not propose to take any advantage of the presumed higher speed of the Clippers over the present Commodores and the S-40's. I notice by the press releases which were issued some time ago in connection with the purchase of the S-42's that the cruising speed was estimated at about 125 mph. It is possible that this has been increased, as would seem to be indicated by your letter, to 150 mph, ~~but~~ this seems a really surprising increase, but even if it is

135 mph as mentioned in your letter, departing from Miami at the same time as their present departure time (08.00) the 1667½ miles between Miami and Cristobal (via Havana, Cienfuegos, Kingston and Barranquilla) can be covered in a total flying time of slightly less than 12½ hours. Assuming four stops of 45 mins. each, we find a total of stops plus flying time of 15½ hours from Miami to Cristobal. It should be perfectly feasible for Panair to operate from Miami 08.00 and reach Cristobal over the route mentioned before midnight of the same day with only about an hour's [fol. 4888] night flying between Kingston and Barranquilla, but with the Barranquilla/Cristobal flight entirely at night. Northbound departure from Cristobal for Barranquilla would be at midnight under this possible schedule, arriving Miami the afternoon of the same day. This 08.00 departure southbound from Miami is apparently perfectly feasible, since Panair have been doing it for a long time and have been taking passengers from the trains and the Eastern Air Transport planes, so that I cannot understand the apparent proposed departure from Miami at 09.30 with the Clippers, instead of at 08.00 as at present. In connection with a possible one-day service between Miami and Cristobal, I should think it would be perfectly feasible for Panair to operate in the way that they formerly did, from Miami via Puerto Cabezas, which would give them a total flying time according to their own figures of 10½ hrs. for the 1,434 miles, with stops at Havana and Puerto Cabezas of 45 mins. each, thus arriving at Cristobal at 20.00 with a 08.00 departure from Miami. I have never had it explained to me yet why the U.S. Post Office is willing to give Colombia a better airmail service than Canal Zone, and would certainly think that in the long run Panair would be better off if they would give the Canal Zone a one-day service and still give Colombia the same service as they have at present, since they could operate a shuttle line from Cristobal to Barranquilla, or else handle their mail direct into Bogotá via the UMCA line, thus eliminating the Cristobal/Barranquilla, Barranquilla/Kingston and the Kingston/Havana operation.

I am wondering why Panagra has to bear the brunt of any stepping up of the through schedule from the U.S. to

B.Aires, since it would seem to be in order for Panair to assume a certain part of that burden. This, of course, is none of my business, but I have drawn up some possible schedules which are attached herewith, based on increased speed of varying amounts over different portions of our line. As I have previously written you, it is possible today to promptly cut one day off our service with our present equipment by making Talara the first overnight stop, Arica the second overnight stop, Santiago the third night and Montevideo the fourth night. For ease in figuring any particular schedule over any portion of the line for a number of different speeds, I have had the attached chart drawn up showing the U.S. Post Office mileages between all points, our present flying time between these points as scheduled, and the minimum amount of time I believe necessary at each one of the stops.

I had hoped to get some schedules worked out for various other combinations than the two combinations shown on the attached schedule. I am also not satisfied with the schedule as worked out for the combination of the Commodore, Douglas and Ford, but the general idea is pretty well demonstrated on the attached schedules and the times can, of course, be juggled to suit the convenience of any particular arrangement of overnight stops which may seem better. Any schedule across the Argentine pampa at night is likely to lose us a certain amount of cabotaje business in the Argentine. However, as I mentioned above, an infinite number of schedules can be arranged which would throw the night-flying section of the route to some other point, preferably Chile as long as we have no cabotaje rights there.

[fol. 4889] In summary, I recommend that we very seriously consider and exhaustively pursue the question of immediately purchasing from some source two Commodores for our Northern Division operations, in order that we can in the very near future replace our S-38's with airplanes of a greater capacity and with at least equal speed at a reasonable figure, rather than attempt to turn over our Northern Division operations to Panair, who, as you recall, did a

bad job of operations in this section during the time that they had it when Panagra was first getting started. Please don't fail to send me all the information you can get on the S-42, which is, as I stated before, the Clipper that I believe you are talking about in your letter under answer. In the meantime if this matter becomes acute I can arrange to come to New York at a moment's notice.

(initialed) HRH
H. R. Harris

Assume Clipper 135 mph
Douglas 175 "
Ford present schedule

Assume Commodore 110 mph
Douglas 175 "
Ford present schedule

	S.B. Lv.	S.B. Arr	Equip.	N.B. Arr	N.B. Lv.	S.B. Lv.	S.B. Arr	Equip.	N.B. Arr	N.B. Lv.
Cristobal	8.40		C	16.55		6.00		C	19.05	
B'tura	12.35	12.05	C	13.00	13.30	10.40	10.10	"	14.25	14.55
Tumaco	14.20	14.00	"	11.15	11.35	12.45	12.25	"	12.20	12.40
Guayaquil	6.00	17.35	"	17.10	8.00	17.15	16.45	"	7.50	8.20
Talara	7.40	7.10	D	15.30	16.00	6.00	19.05	"	18.05	6.00
Piura	8.05	8.00	"	15.05	15.10	6.25	6.20	D	17.40	17.45
Chiclayo	9.00	8.40	"	14.10	14.30	7.20	7.00	"	16.45	17.05
Pacasmayo	9.20	9.15	"	13.50	13.55	7.40	7.35	"	16.25	16.30
Trujillo	10.00	9.45	"	13.10	13.25	8.20	8.05	"	15.45	16.00
Lima	12.20	11.50	"	10.50	11.20	10.40	10.10	"	13.25	13.55
Pisco	13.10	13.00	"	10.00	10.10	11.30	11.20	"	12.35	12.45
Arequipa	15.45	15.25	"	7.25	7.45	14.05	13.45	"	10.00	10.20
Tacna	16.55	16.35	"	6.15	6.35	15.15	14.55	"	8.50	9.10
Arica	6.00	17.10	"	16.50	6.00	16.00	15.30	"	8.05	8.35
Antofagasta	8.25	8.05	"	14.25	14.45	6.00	18.05	"	16.25	6.00
Ovalle	11.30	11.15	"	11.20	11.35	9.05	8.50	"	13.20	13.35
Santiago	13.10	12.40	"	9.40	10.10	10.45	10.15	"	11.40	12.10
Mendoza	15.10	14.40	F	7.40	8.10	12.45	12.15	F	9.40	10.10
V.Mercedes	17.20	17.00	"	5.30	5.50	14.55	14.35	"	7.30	7.50
B.Aires	21.20	20.50	"	1.30	2.00	18.55	18.25	"	3.30	4.00
Montevideo		22.50	"		Minite		20.25	"		2.00

Overnight Guayaquil
Arica

Overnight Talara
Antofagasta

Lima, Oct. 27, 1933.

fol. 48921

ELAPSED TIME REQUIRED BETWEEN STOPS

NEAREST 5 MINUTES

	Time at stop-min	Miles between stops	Present sche dule, Oct. 1933	110 MPH	125	130	135	140	150	175
Cristobal										
B'ventura	30	466.5	4:20	4:10	3:40	3:35	3:25	3:20	3:05	2:40
Tumaco	20	189.	2:00	1:45	1:30	1:30	1:25	1:20	1:15	1:05
Guayaquil	30	436.5	4:45	4:00	3:30	3:20	3:15	3:10	2:55	2:30
Talara	30	203.5	2:05	1:50	1:40	1:35	1:30	1:30	1:20	1:10
Piura	5	66.	:45	:35	:30	:30	:30	:30	:25	:20
Chiclayo	20	110.	1:15	1:00	:55	:50	:50	:45	:45	:35
Pacasmayo	5	44.	:30	:25	:20	:20	:20	:20	:20	:15
Trujillo	15	70.5	:40	:40	:35	:30	:30	:30	:30	:25
Lima	30	322.0	3:00	2:55	2:35	2:30	2:25	2:20	2:10	1:50
Pisco	10	120.5	1.10	1;05	1:00	:55	:55	:50	:50	:40
Arequipa	20	396.5	3:25	3:35	3:10	3:05	2:55	2:50	2:40	2:15
Tacna	20	137.0	1:10	1:15	1:05	1:05	1:00	1:00	:55	:50
Arica	30	38.5	:20	:20	:20	:20	:15	:15	:15	:15
Antofagasta	20	363.0	3:15	3:20	2:55	2:50	2:40	2:35	2:25	2:05
Valle	15	489.0	4:00	4:25	3:45	3:45	3:40	3:30	3:15	2:50
Santiago	30	210.5	1:45	1:35	1:40	1:35	1:35	1:30	1:25	1:10
Mendoza	30	151.0	1:30	1:25	1:10	1:10	1:05	1:05	1:00	:50
V. Mercedes	20	200.5	1:50	1:50	1:35	1:30	1:30	1:25	1:20	1:10
aires	30	405.0	3:30	3:40	3:15	3:10	3:00	2:55	2:40	2:20
Monte		132.0	1:30	1:10	1:05	1:00	1:00	:55	:55	:45
TOTALS	380	4551.5	42'45"	41:20	36:15	35:05	33:45	32:35	30:25	26:00

[101 4891

of these boats from the Panair, the repairs to two of the Sikorskys could be avoided, thereby saving $20,000., plus an additional $10,000. which he considers to be the salvage value of one (I am not sure whether he meant two) Sikor-[fol. 4894] skys.

Up to this point I just looked and listened and when MacGregor had his speech finished I asked Harris's opinion, which, of course, I had previously known. Harris stated in unmistakable language that whereas he agrees that the Sikorskys must be replaced by some other ships, he is entirely opposed to the purchase of the Commodores, as in the first place they are getting to be pretty old and in the second place they would require major overhauls, whereas by equipping the Fords with floats we would have a tried plane which would travel at least as fast as the Commodores, with adequate passenger capacity, and all this at a cost of only about $10,000. per plane.

This started the usual controversy about the impracticability of landing Fords on floats in case of an emergency, to which Harris replied that he is quite sure that a Ford on floats can land safely at any point where we land. Furthermore Harris stated that he has personally made flights in Fords on floats and that these same planes on floats are used continually in Canada.

MacGregor's answer was that whereas the Fords on floats might land in smooth water, rivers, etc., it had not been proven that in case of an emergency landing in the rough ocean they would stand up. Harris answered that he thought they could, but that in any case it still remained to be proven that Commodores could land under such conditions, as according to his knowledge they had not had this particular experience on the East Coast.

At this stage of the conversation, if you can call it [fol. 4895] such, MacGregor said that Panair's expert engineers are definitely opposed to the idea of equipping and using Fords on floats, and it was then that Harris blew up, asking MacGregor whether he thought that he (Harris) did not know what he was talking about and whether MacGregor placed the judgment of an engineer who has not

been on this Coast above his judgment, etc., etc. I told them to keep their shirts on and look at the whole thing from a practical viewpoint, adding that while I did not pretend to know very much about the subject it seemed to me that Panagra ought to place Mr. Harris's judgment above that of anyone sitting up in New York, but that as long as there is some doubt in anyone's mind as to the safety factor, the logical thing to do, at least to my way of thinking, seems to be to risk $10,000., equip one of the Fords with floats, and then have Harris and his experienced pilots give this plane a thorough test under various conditions.

MacGregor, while then beginning to weaken, said that he did not think that Mr. Trippe would ever agree to what he considers a useless expenditure. I told him that I did not believe that any sane, thinking man could object to such a program and that I felt that if he, MacGregor, agreed in principle to give the Fords a thorough test in the way outlined, all the Directors of Panagra would approve of this course. MacGregor went on to say that he tried to get this idea across for three years and that he had proved himself a poor salesman.

A great deal more was said, but the above about portrays in a general way the sum and substance of the discussions, during which it was quite apparent that Trippe is determined to palm off one or more of his Commodores [fol. 4896] at what looks like a fancy price, and that MacGregor is committed to put the idea across with Harris who, however, took a very determined stand against MacGregor's proposal.

Reverting to the passenger capacity of the Fords on floats, Harris stated that eight passengers could be accommodated but that he wants to check this figure up further before definitely committing himself to this statement.

Turning the whole matter over in my mind, it seems to me that as we will soon have various Fords available and as a set of floats can be delivered within 90 days at a cost of about $10,000., and furthermore as our General Manager of Operations, Harris, is most emphatic in saying

that from a technical viewpoint these planes would be perfectly satisfactory, we should lose no time in ordering one set of new floats. I say "new" floats because when MacGregor finally weakened and reluctantly accepted the idea of giving the Fords a trial, if the Directors agree to it, he mentioned something about saving money by buying a set of floats from Panair, but here again he reached into a hornet's nest as Harris seemed to know all about the particular set of floats MacGregor had in mind, telling him point-blank that those Panair floats are not suitable for our purpose and that he would be opposed to anything but a new set of floats.

In giving you this epistle, I appreciate that you have probably gone through this same agony on a number of occasions, but as the time is approaching rapidly when something *has* to be done, and as it is so thoroughly illogical to invest an important sum of money in relatively old [fol. 4897] planes of lesser speed than the Fords, or certainly no more, I think this whole question should be taken up very vigorously and settled once and for all; otherwise we will soon find ourselves with fast planes and ample passenger accommodations from Tumaco or Talara south, with a definite bottleneck in the Northern Division, which will be highly unsatisfactory.

Incidentally I want to add that while I brought up the question of operating cost of the Commodores as compared with Fords, I was not able to get a definite statement from MacGregor with reference to the operating cost of the Commodores except that he kept on answering that he did not think it was much more than the cost of running Fords, emphasizing, however, that we would have much more carrying capacity on the Commodores than on the Fords. To this I answered that if the Fords can carry 8 passengers on the northern run, I felt that this capacity would meet our requirements for a year or two, by which time we would have to have a different kind of a plane anyway.

Very truly yours,

/s/ A. Garni

[fol. 4898]

W. R. Grace and Company Exhibit 83

#560

COPY

SANTIAGO
Jan. 26, 1935

Mr. H. R. Harris,
New York

I have the copy you sent me of the memo. you wrote to Mr. Roig on January 17th in compliance with a request from Mr. Roig as to a definite recommendation from you regarding future operations in the Northern Division.

To say that I am surprised at the strong recommendation contained in the last paragraph of your memorandum is understating the facts, and that a recommendation of such a drastic nature was made by you without an interchange of ideas with me leads me to believe that you have received information or held conversations of which so far I have not been advised.

As I recall it, we discussed the Northern Division operations quite at length in Lima and we agreed that we might possibly extend our land-plane operations as far north as Tumaco but that operations between Tumaco and Cristobal must of necessity be carried on with either seaplanes or amphibians. We further agreed that of the two latter types the amphibian would be the more advisable, because in case of delayed schedules or shortage of equipment further south, the amphibian could operate as a land-plane as far as we desire it so to do. I mentioned to you that at odd times I had been asked by one or other of the Grace Directors what I thought of the idea of flying over Colombia as an alternate or substitute for our present route, and I informed you that I answered the inquiry by stating that such a radical change would have to be the subject of an intensive study and the feasibility of making the change determined by actual flight surveys. I did not, I believe, go very deeply into my reasons for lack of enthusiasm at the idea because it did not occur to me that these ideas were in any way definite enough to warrant a written recommendation.

He told me by the way that he had had lunch with Trippe the day before and Trippe had expressed very emphatic objections to our making Talara the first night on the ground that the schedule was too tight to make this possible. Harris took the position that he was not prepared to agree to this until he had seen more of the S-43's performance. Trippe's idea is that we should figure on Guayaquil as a permanent overnight stop and at our own expense arrange for one floor in the new hotel to be fitted up by Panagra for accommodation of their passengers. Trippe also tried to get him to agree to the omission of Tumaco on the ground that it would save half an hour's time on the schedule. Harris definitely opposed this on the ground that on many trips we would have to make the stop anyhow for gas, that it would involve loss of 69 miles of mail pay and [fol. 4905] that if we were not doing enough business in Tumaco now we ought to be working toward doing more, including carriage of mail, rather than less. They also discussed the question of new equipment for Aerovias and although Trippe has heretofore taken the position that if we bought any new planes we should buy second-hand Fords, Harris said he came along this time without objection on the suggestion of making replacements with new more up-to-date equipment. If we can make P & L figures which will justify it I, of course, favor this latter course not only from the general operating standpoint but as a step toward building up Aerovias in the nationalizing program.

You will be interested to know that Harris went out of his way to speak in the highest terms of the work which Campbell is doing. He said that he felt that through his work, through his connections in aviation circles, and through his general tact in working with these connections and with Panair we were in a position to keep abreast of new developments in aviation in a far more effective way than heretofore and that having connected with Panagra New York someone with Campbell's technical knowledge a void which he had long felt to exist was being very well filled. He said that he had suggested and would press with MacGregor the idea of taking an extra room at the Pan-

agra uptown office which Campbell could have for his use there where he could work and see people quietly; also that Panagra should provide him with a full time stenographer.

Very truly yours,

/s/ H. J. R.

Enclosure
to Kirby No. 20

[fol. 4906] *P.S.* I should have mentioned above another important matter which came up in the conversation between Trippe and Harris above referred to. Trippe asked Harris if he felt that the Grace people in Santiago had done and were doing everything reasonably possible to secure cabotaje. Harris replied that cabotaje was not something which could be secured at any given moment; that he felt the Grace people had not only done everything possible directly to secure it but that indirectly they were gradually building up a very important goodwill for Panagra which in the long run would contribute to procuring cabotaje. He mentioned various specific instances evidencing goodwill toward Panagra in governmental circles of a character which showed great progress in this direction, among other things referring to the recent suggestion by the government that we have our own radio at Cerrillos. Trippe said that he had considered at various times whether Grant should be sent down to try to get cabotaje but had hesitated to push the idea for fear Grace would object. He said that Consul General Grez had told Grant that cabotaje could be secured provided the right people went after it but that Grace could not get it. Harris did not support this idea but as I recall what he told me did say that he felt sure that if Trippe felt that Grant could accomplish anything Grace would not raise any objection to his trying.

H. J. R.

Had I been advised that facts and figures should be compiled and a recommendation made, I would have gone into the matter a great deal more thoroughly and I would have endeavored to estimate the initial expense involved in making the change. The recommendation so strongly made by you for immediate action is not supported by estimates and other pertinent information as it should be in order to have full force and effect. I take it for granted, therefore, that this matter has been talked over with you and that you have been presented with facts and figures of which so far I am uninformed.

In connection with your recommendation, I presume you have fully considered and studied the position that the Scadta Company, the UMCA Company and the Samper Company would take with regard to what seems to me a deliberate invasion of their territory. I presume you have also been informed that the Colombian Government would readily modify our permits to permit us to handle international traffic along the route you specify. Recent advices from Colombia would seem to indicate that the Government is not only going to institute airmail and passenger service within its frontiers but is going to make some modification to the Scadta contract which will have the effect of lessening the influence and possibly circumscribing the operations of that Company. Unless you have some exact information, I can see where the Colombian Government might strongly object to the interjection of a fourth commercial aviation company, American owned and operated, and ask-
[fol. 4899] ing the privilege of entering territory which the Government itself intends to exploit with its own planes.

Again, this is the first time a recommendation has been made with regard to a change in operations where an actual flight survey has not been made by our own planes and our own pilots. As you know, I personally have flown over a considerable area of Colombian territory on Scadta planes, and I recall any number of instances where the planes either did not set out or started and returned to base because of impossible weather conditions at certain periods of the year. Just last week Keeley informed me that when he came south the Cali district was absolutely closed in with

clouds practically to the ground. The terrain which must be flown by land planes is nearly entirely uninhabited, covered with jungles and the possibilities of immediate rescue, even if the planes alighted safely, are extremely remote. Tropical storms are the rule rather than the exception, lightning discharges are frequent and the danger to all-metal planes from the latter has been recently evidenced in a striking manner in the K.L.M. operations.

It would seem to me, therefore, that for no particularly good reason, in view of the fact that the acquisition of an amphibian of the type of S-43 would ensure extremely rapid transportation along the sea coast, you recommend abandoning a safe and sane operation for the hazards of mountain flying in the tropics. In addition, we forego the gradually increasing traffic we are bulding up north and south of Buenaventura. I am confident that before many months have passed Panair will be ordered to make the trip between Miami and Cristobal in one day. Even although we, as Panagra, have not so far officially pressed this matter in Washington, I am confident that many letters have been written by passengers and possibly people connected with the U. S. government calling attention to the unreasonably slow Miami/Canal Zone operation and recommending that Panair be instructed to remedy this defect. If my surmise is correct, what would we gain by flying over Colombia as against building up traffic on the easiest portion of our route?

It may be that you are influenced in your recommendation by the statement you say Lindbergh made to you that the future of air transportation lay in land-plane operation. I believe Lindbergh had an entirely different picture in mind. He was thinking about trans-atlantic or trans-pacific operations with stratisphere or semi-stratisphere planes flying tremendous distances at high speed. I do not think for one moment that Lindbergh had in mind our 1,000 mile stretch between Cristobal and Guayaquil.

It may be that I am unduly influenced in my views because of our present troubles in Chile which originate primarily from the fact that we are flying through the centre of the country. We would have no troubles to speak of

were our operations confined to the sea coast. With the Chilean picture in mind, with the very evident desire of the Peruvian Government to ease us out of cabotage in Peru, with propositions being made to Ecuador for the establishment of a domestic line within the country, with the Argentine intimating it will soon start service in the interior with army planes, it would seem to me that we have enough trouble on our hands. Why, therefore, you should recommend taking on another burden I cannot conceive unless, as I said before, you have some information that I do not possess.

[fol. 4900] Personally I see no reason for changing my previous recommendation that, if possible, we run our landplanes as far north as Tumaco, if even that is considered necessary. The acquisition of two or three S-43's would ensure adequate, comfortable, speedy and safe transportation along the coast where we could always pick up enough shorter haul passengers to take the seats not occupied by our long haul clients.

I am sending a copy of this letter to Mr. Roig because I would wish our Directors to know that until I have much further information than that contained in your memo. to Mr. Roig, I cannot subscribe the recommendation made by you.

(sgd) J. D. MacGregor

[fol. 4901]

W. R. Grace and Company Exhibit 84

(Copy of handwritten letter)

Delray, February 24, 1935

Dear Roig,

PANAGRA—The weekly summaries which I receive have given me the impression that this is the business which has the most serious problems and the one which requires the most able attention for the present.

In *Chile* and in most of the other countries of the coast we have questions which vitally affect the destiny of this

business. Furthermore, the men who are handling them are not competent to get the results which we must obtain. In fact it is our experience that when serious problems occur we must go out from headquarters to handle them.

Your mind has been working in the same way as I learn from Garni that you propose to go out to the coast at once to undertake again the task that you started at last Autumn and at which you were interrupted to return to handle the Washington matter which you did so ably.

The Panagra task has grown so varied and spread out that I feel you will need a good deal of help in order to get it all in hand in a reasonable time.

CHILE—Garni tells me that you are thinking of taking Vidal with you. That sounds like a good idea. Chile is a tough nut to crack and I fear that with the development (L.A.N.) of the N.A.L. it will become tougher. It will take your imagination and judgment and also a very criollo connection to get a satisfactory connection.

ARGENTINE—You need an *able, loyal* man there as we are not getting anything like a square deal in B.A. The selection and location of that man is very important.

BOLIVIA—We need the best technical advice we can get. I thought of employing Allen for a month or two to make [fol. 4902] an exhaustive study of the Bolivian area and making a report regarding flying conditions and traffic movement that would be a fixed guide for us. Campbell would probably help him with this.

PERU—You ought to get Kirby and Shea headed on a clear course and get them to follow it actively and effectively reporting to you very frequently and getting results. My feeling is that Kirby is the man upon whom you are going to be able to rely for most help in the future provided we can get him somewhat freed of the Lima management.

ECUADOR—You need a very top class lawyer in Quito and with this continual visits by MacGregor and Harris under your close guidance.

COLOMBIA—Here again I think we need Allen to make an exhaustive survey perhaps with Douglas Campbell and a report that will be thorough, intelligent, and that will carry weight in our minds, in Lindbergh's and perhaps also in other Panagra minds. We don't know ourselves today whether we need a Seaplane, an amphibian, a Douglass on pontoons or a Douglas land plane. I would be inclined to put Douglas on this task along with Allen or some equally competent and authoritative man and have them dig and dig until they come out with the answer.

I don't see how we can handle the problem of equipment for the Northern section until we get this study and this report. The ideal thing would be to fly over that whole section in a land plane and although it might cost something to build emergency fields I am not sure that it might not be the cheapest course in the end for land planes are much faster and will develop much more quickly than the sea planes. I think that Lindbergh's mind was working somewhat on that line. At any rate no one can tell until we [fol. 4903] study that whole Colombian matter more thoroughly. If we could tap the interior population it would enormously increase the scope of our enterprise in the same way that if we could touch the centres of population in Bolivia the interest of that section would be greatly increased and the whole problem in Chile would be made infinitely easier.

So get hold of a first class technical man like Allen, and set him on these problems in Bolivia and Colombia (and Ecuador) and get your *facts* as a basis for your conclusions.

It won't be many years until we (W.R.G. & Co.) will need a well equipped aviation staff. Now is a fine chance for you to begin building it up. It will cost something but we should be ready to invest some of our profits in Panagra in working out intelligently and expertly the problems of today and preparing for the task of tomorrow.

Ten years from now our aviation business may have become comparative in importance with the steamship business to the West Coast. So let us select able men and begin

to build them up. We are building up Campbell and some men on the coast. But we need a technical man now who will have outstanding ability and whose name will carry weight. We might start with Allen on a part time basis and have him handle special investigations with the idea that he would become not an employee but a regular consultant. If this is not xxxxxx practicable then we might get Lindbergh or Allen to suggest a man of this type who could become either an employee or a consultant.

I wish you a fine trip. I fear it will be a rather long one. Let me hear from you from time to time.

Yours sincerely,

D. S. IGLEHART

[fol. 4904]

W. R. GRACE AND COMPANY EXHIBIT 85

#571

Letter No. 68
(D.S.I. Trip Series)

New York, May 29, 1936

D. S. Iglehart, Esq.,
Guayaquil, Ecuador

Dear Mr. Iglehart:

I enclose copy of letter to Kirby amplifying my cable No. 24 to you. As I have said right along I have no doubt whatever of our being able to work out this Livingston matter satisfactorily. I wish we could do it more quickly but as you so well understand these matters take a little time. The idea, however, is so fundamentally sound that it is in the end bound to be so recognized and put into effect.

I had lunch and spent the afternoon yesterday with Harris at the University Club and believe we made considerable progress in a number of directions. He seemed in every way to be under less tension than when I saw him the day before and was I felt thoroughly cooperative on all of our pending problems.

[fol. 4893]

W. R. GRACE AND COMPANY EXHIBIT 82

ORIGINAL LETTER
STEAMER COPY FOLLOWS #554

No. 62
(AG Trip Series)

(Letterhead of W. R. Grace & Co., New York, N. Y.)

A. GARNI
VICE-PRES. & TREAS.

Air Mail 3.10
New York 3 (Illegible)
3/15/34

LIMA, March 8, 1934.

Harold J. Roig, Esq.,
NEW YORK.

Dear Roig:

PANAGRA

Northern Division/Commodores: I attended a lengthy discussion between MacGregor and Harris with reference to a change in the existing equipment in use in the Northern Division.

It seems that the pow-wow between the two had been going on for some time prior to my appearance at the meeting, so that when I got into the discussion Harris and MacGregor already had each other by the wool over a very definite difference in opinion as to which planes are the most suitable, both from a technical as well as from a financial viewpoint.

It was quite obvious that MacGregor came down here determined to push the Commodore idea down Harris's throat, as, with reference to these boats about to be discarded by Panair, he had his speech down pat. MacGregor stated emphatically that as the Sikorskys are about to undergo serious overhaul, costing approximately $10,000. per boat, and as they are inadequate both as regards comfort and capacity the only logical solution of this problem is to take advantage of the Panair's offer and purchase from them a Commodore at $50,000. He then went to a devious calculation to show that the net cost of a Commodore would really only be $20,000., as by purchasing one

With regard to the radio navigation devices, in view of Allen's opinion, I think we should take active steps to improve these regardless of what kind of flying equipment we use on the Northern Division and that we should make an investigation of development along these lines in this country, placing on Panair the burden of proof that they have something better.

Very truly yours,

(sgd) DOUGLAS CAMPBELL

enc.

[fol. 4910]

W. R. GRACE AND COMPANY EXHIBIT 87

[Handwritten notations—I have so much that I would like to write about but must leave it until I get on the ship for Chile.

Since dictating this I have your letter about schedules and am discussing it with Shea. It looks pretty good to me. I thoroughly agree about the purchase of the second S43.]

Letter No. 15 #341
(Trip series)

On board "Santa Lucia",
May 5, 1936.

H. J. Roig, Esquire,
New York.

Dear Roig,

PANAGRA — COLOMBIA

Referring to my cable on this subject and your reply, I want to make it quite clear to you that in suggesting that the S-43 should fly overland I do not mean to suggest that any unwise risks should be run but rather that we should make a very cautious approach to the solution of the problem.

I do feel that it is of the most serious importance for us to get Trippe to agree to our going into Cali and that some method should be discovered for putting pressure on him in order to obtain his consent. I rather think that

the discussion of putting our ships into Miami north and southbound or to get a hookup of our own to Panama might conceivably be used as a lever to bring him into line on some of these matters. I am not at all sure that it is a practical thing to stop in Miami and I am not sure, even if we contemplate doing so, whether it suits you to talk about it much until we have a definite plan worked out. On the other hand, I feel that even if you find that it is not practical to do this, the idea might be played up in a way that would frighten him into giving us a better schedule to Panama or allowing us to go into Cali, or both.

I am very glad to learn from your cable that you are getting Allen and Campbell to work on the Colombian idea and I am sure you will also find the means of bringing Trippe into line in one way or another. I will await developments of all this with great interest.

Very truly yours,

/s/ D. S. IGLEHART

[fol. 4911]

W. R. GRACE AND COMPANY EXHIBIT 88

ANCON, C. Z., December , 1936.

Hon. Harllee Branch,
Second Assistant Postmaster General.

Dear Mr. Branch:

The territorial invasion by European companies which has for some time been an ever increasing menace to Pan American-Grace Airways, Inc., in its capacity as carrier of U. S. mail between ~~United States~~ *Canal Zone* and Buenos Aires over F. A. M. Route #9, ~~via~~ *along* West Coast of South America *and over Andes*, has reached a stage where prompt action must be taken.

The heavily subsidized German line, Condor Syndicate, has recently extended its airmail and passenger service from Buenos Aires to Santiago, Chile, which is now the western terminus of its trunk line from Europe to South

Realizing, however, that the authorization for the establishment of such a service might not be forthcoming, as quickly as is necessary to meet the situation described, it is suggested that the following method be adopted as a temporary expedient:

1. Extend one of the weekly international trips from Arequipa (Peru) through La Paz (Bolivia) and Córdoba (Argentine) to Buenos Aires.

2. Include as a scheduled stop on the existing twice-weekly service from Santiago to Buenos Aires, the important Argentine city of Córdoba, connecting there with the service described in the preceding paragraph.

We attach herewith a statement showing the additional mileage to be operated. The total additional mileage involved is 162,760 miles per year, which at the contract rate [fol. 4915] of compensation of $1.50 per mile, amounts to $244,140. In order to cooperate in starting this service, we would be willing to waive until such time as a third through service could be authorized, payment for 33,488 miles, or $50,232. per year, making the total compensation which we are respectfully requesting for this new service, the sum of $193,908. per year.

We attach a map showing the route of the services proposed above.

For the reasons outlined above, prompt announcement of this service is most important in order to protect the United States airmail position in South America. On our part, we would use every effort, once authorized, to install and commence operation at the earliest possible moment.

Very truly yours,

PAN AMERICAN-GRACE AIRWAYS, INC.,

Vice President.

Enclosures

[fol. 4916]

	Route Miles	Miles Per Year	Per Mile	Cost
Additional mileage:				
Arequipa to Córdoba, via La Paz, Oruro, Uyuni, Salta and Tucumán	1,385	144,040	$1.50	$216,060.
Additional mileage deviation of two existing services via Córdoba	90	18,720	1.50	28,080.
Additional Mileage	1,475	162,760	$1.50	$244,140.

Cost at $1.50 per mile	$244,140.
Less Waiver, 33,488 miles at $1.50	50,232.
NET ADDITIONAL COMPENSATION	$193,908.

[fol. 4917]

W. R. GRACE AND COMPANY EXHIBIT 89

grace:
dated 23rd
3 pm
from MACGREGOR (buenosaires) december 23 1936

1 ROIG
2 confidential
3 I had
4 long
5 conversation
6 Sum-
7 ner (XX)
8 Wells
9 this morning
10 who
11 unreservedly
12 agrees
13 there should be

kind of concession in Ecuador, although I have not yet seen a copy of it. The concession is ad referendum, but to whom it is to be referred, I don't know.

At the same time you will have undoubtedly learned that L.A.B. has secured what seems to be an exclusive contract for "cabotaje" in Bolivia, and also the exclusive right to make *new* international connections. I presume this means that such international connections as are included in the Panagra contract can be carried out by Panagra.

What disturbs me in this is the fact that SCADTA proposes to be an international operator. Hammer is a former SCADTA employee and is also connected with Lufthansa. Assisting Hammer at Quito was a man of the name of Simon, his brother-in-law and a distant relative of Mr. Kyllman, President of L.A.B. Hammer was also assisted by a man by the name of Carstanjen who, although he claims he is connected with the hardward store of Otto Woolf of Colon, broadcast that he was also indirectly connected with the Hammer project and was representing in that connection the interests of Lufthansa and the German Government. Carstanjen stated on a steamer on which Mr. Kloditz was travelling that after the Quito deal was put through he would proceed to Caracas with the intention of negotiating with the Venezuelan Government so that a Quito/Caracas service could be established.

Holguin says that he has learned that the Hammer proposal seems to be part of a three-cornered arrangement now being worked out by foreign interests. It would seem, therefore, that the Germans are getting ready to establish a round-South America cordon under the auspices of Lufthansa and the German Government.

[fol. 4921] I am telling you this so that you may quietly investigate and find out if possible how they propose to join L.A.B. and the Hammer Company in Quito. Do you think there is any possibility of their dickering with Hughie Wells, or is there a possibility of their buying out Faucett at a price which Faucett would find it hard to refuse? To be forewarned is to be forearmed in these matters and, as a scheme of the kind I have indicated would be a direct

attack on American interests as represented by Panagra, I should wish to have the fullest possible information in order that our Directors could determine whether representations should be made to our Government.'

You will, of course, treat this letter as highly confidential because of its nature.

Kind regards,

Sincerely yours,

J. D. MacGregor.

JDM/Q
cc: Mr. A. Garni

[fol. 4922]

W. R. Grace and Company Exhibit 92

Copy

March 2, 1937.

Personal Memorandum for the Directors:

In connection with the purchase of two DC-3s for our Santiago/Buenos Aires service and in addition to the technical and traffic reports presented to our Directors, I feel it is my duty to apprise the Directors that, in my opinion, it is essential to provide more modern and larger equipment as a means of protection against what I feel confident is a rapidly progressing plan to encircle the South American continent by an air service through a combination of local Companies, the policy of which will be directed by the German Air Ministry. Recent developments, in my opinion, have shown clearly this trend.

The Directors know that the Condor Company, a subsidiary of Lufthansa, is already carrying mail and passengers from Para, Brazil, via Buenos Aires to Santiago, Chile. They are aware that the Condor Company also operates to the Brazilian/Bolivian border at Corumba where it delivers and receives mail to and from Lloyd

Aereo Boljviano, anothers Company controlled by German interests.

Recently the Brazilian Government has granted permission to the Bolivian planes to land at Corumba in Brazil. The Bolivian Government has recently, through the efforts of the German Minister at La Paz, given a ten-year contract to Lloyd Aereo Boliviano which practically insures it exclusive "cabotaje" rights in Bolivia and gives it the refusal of any international extensions other than those already granted to Panagra.

In the north, the SCADTA Company announces air service between Bogota and Quito via Cali and Dos Rios, once a week, commencing in February. This move is into what has been considered as Panagra territory.

In Ecuador, Mr. Hammer, formerly with SCADTA, and with the Condor Company and also with Lufthansa, has just secured an ad referendum contract for internal services, of which I have not yet a copy, but which will undoubtedly permit him to make international connections as opportunity offers. Assisting Mr. Hammer to secure this contract was a Mr. Simon, who is a brother-in-law of Hammer and a relative of Mr. Kyllman, President of Lloyd Aereo Boliviano. Hammer was also assisted by a Mr. Carstanjen who, although he claims he is connected with the hardware house of Otto Woolf of Cologne, Germany, states that he is connected with the Hammer project and represents the interests of Lufthansa and the German Government. Carstanjen also states that as soon as the deal in Quito is satisfactorily concluded he will leave Ecuador and proceed to Caracas, Venezuela, to initiate similar negotiations.

[fol. 4923] Yet, more startling, is the fact that another assistant to Mr. Hammer is a man by the name of Griesbach who is the Quito agent for Mr. Chanange, and that Mr. Chanange was the agent of the SCADTA Company when it operated previously to Guayaquil.

From the above we see that German interests have already completed their plans in the south and are in the

process of completing them in the north. I have repeatedly been told by disinterested parties in South America that the German Government is supplying young Army pilots to the German Companies in South America requesting only that these Companies pay the pilots a living allowance on the understanding that, at a moment's notice, they can be recalled to the Colors.

How can these two spheres be joined? Most evidently through the acquisition of rights in Peru or by the acquisition of Companies already possessing those rights.

In Peru there are two Companies that could be acquired by German interests—The Faucett Company and Condor Peruana, of which Hughie Wells, former Pan American Airways employee, is the President. I have not the slightest doubt that Condor Peruana could be purchased by Lufthansa at a very reasonable price. This Company has temporary rights to carry freight to the mining districts and is applying for rights to engage in internal services. It owns, presumably, the four Condor planes which were destined for Bolivia and were grounded in Peru. Of these four planes, only one is at present in condition to operate. The Company has no financial resources and therefore, in my opinion, would be aldt to turn its vexatious problems over to a strong financial group. If it acquired the necessary financial backing, the Peruvian Government would be only too glad to give it the necessary licenses.

In connection with the Faucett Company, recent conditions have caused Elmer Faucett to feel the pinch of competition. A lack of discipline amongst his pilots, condoned by Faucett, has caused rumors to circulate amongst the travelling public that to travel on Faucett's planes is somewhat risky. This fact is evidenced by a recent visit to our Lima offices by Mr. Miguel Pardo, a heavy stockholder in Faucett, who is asking whether we would now be willing to enter into a traffic agreement for the maintenance of rates. This is the first overture ever made by the Faucett Company and, in my opinion, would never have been made if things were "rosy" with them. It is possible, therefore, that Faucett would welcome a buyer who would be will-

[fol. 4907]

W. R. GRACE AND COMPANY EXHIBIT 86

#566

Letter No. 34
(H.J.R. Trop Series)

NEW YORK, April 23rd, 1935.

Harold J. Roig, Esq.,
Santiago, Chile.

Dear Mr. Roig:—

ALLEN. I enclose copies of memoranda Nos. 2 to 5, all of which I think will be of interest to you. I have passed No. 2 on to Harris with a letter, of which I enclose a copy.

The subject of memorandum No. 3 was brought up by Vidal, who had some doubts as to the safety of the Trans-andean crossing with the 16,500 pound load, and I am clearing this matter through him as he specifically asked me to get Allen's opinion.

AIRPORTS. With regard to memorandum No. 4, Allen makes these comments on your memorandum regarding airports and will have further comments to make after he has had more time to study the question. In order to form a more accurate opinion of the proper distance between emergency fields, he proposes to study the engine failure records of both Eastern Air Lines and the TWA and has promised to send me complete record of these, showing the causes of such failures and the distances flown on one engine before making a safety landing.

USE OF LAND EQUIPMENT NORTHERN DIVISION. In line with Mr. Iglehart's letter #30 to you, I took up this matter with Allen yesterday on his return from the south and he has given his preliminary reaction to it in memorandum No. 5. He further states that the Douglas people are very bitter about the Department of (*the Department*)
Commerce having cancelled a flight to Hawaii they were
[fol. 4908] planning to make in a Douglas plane some three

or four weeks ago, as they feel that the trip was cancelled through pressure which Trippe put upon the Department of Commerce in order that his clipper might make the flight first. Allen feels that they would be very much interested in any project which would tend to prove the adequacy of land planes for across water flights and as the Vice President and Chief Engineer of Douglas are now in New York he proposes to mention the matter to them today.

As I see it, the project involves three major problems: first, location of one or more additional emergency landing fields and study of their adequacy both as to position and in relation to weather. This cannot be done without an aerial survey involving a number of flights along the shore line. Second, definite improvement of radio navigation facilities; you will note that Allen is not at all enthusiastic about our present direction finders. Third, securing permission of Colombian Government to land at Cali and to establish emergency fields.

Although today I would prefer to use over-water equipment if it were available, I nevertheless feel that we will eventually fly land planes on this division and that our going ahead with this study would be advantageous from the point of view of future development. If we could be sure of getting an S-43 before the end of this year, the land plane idea would probably not bring about a more rapid solution of our immediate problem, but we have seen this matter delayed so many times that I think it is well worthwhile to make an active study of this project now even [fol. 4909] if the only immediate result will be to hasten the acquisition of over-water equipment.

In this connection, I note the statement in your memorandum regarding airports that the efforts to secure the use of the island at Tumaco should be continued, and I feel that these efforts should be intensified as soon as possible. I could take this matter up with MacGregor in order to have him push the matter through Uribe Holguin and the Government of Colombia unless you feel that it would be preferable to make a deal on the spot with the owner of the property and try to have it made a Government airport later.

America. We have been advised that these German interests have the intention of extending their operations at a future date further north along the West Coast of South America. This Company is also running a line from Sao Paulo to Corumbá, Bolivia, where it connects with Lloyd Aéreo Boliviano. The latter, while ostensibly a Bolivian Company, has strong German connections and extends across Bolivia to La Paz.

Simultaneously, Chilean National Airline (LAN), the [fol. 4912] Bolivian National Airline (LAB), and the Peruvian Airline (Faucett), have already consummated an agreement under which they plan to preempt Bolivia, joining their respective facilities to establish connections between Bolivia and the West Coast countries.

We also have advices that the subsidized French line, "Airfrance", which has operated between Europe and Santiago (Chile) for a number of years, is considering the possibility of establishing an international extension of this line from Buenos Aires to Bolivia.

The seriousness of this situation is accentuated by the fact that Bolivia, unlike all other countries on the West Coast, has no through international airmail service; is determined to have such a service, and has appointed a special commission to study the whole question and report to the President. In order to secure the prompt establishment of such a service connecting with both the West Coast and the Argentine, there is no doubt that the Bolivian Government would offer exclusive operating rights to one of the foreign companies if Pan American-Grace Airways cannot immediately take a commitment to operate such service. There is ample evidence to substantiate the urgency and seriousness of this situation and the general manager of Pan American-Grace Airways, who has recently again been over the ground, continues writing:

"The situation in Bolivia is extremely delicate."

- - - - - - -

[fol. 4913] "The Germans are pushing vigorously their plans for penetration in South America."

- - - - - - -

"The President of Bolivia is extremely anxious to have an international airmail service run through his country to Buenos Aires."

- - - - - - -

"If we do not fall in with his views, we may find him offering the German Company attractive terms (operating rights) to run the European service from B. A. through Bolivia to Peru and Ecuador."

- - - - - - -

The foregoing is corroborated by a very recent letter dated November 7, from the general manager of our Agent in Bolivia, who has close contacts with the Bolivian Government, and in this letter he stated:

"The Bolivian Government is determined to get an international airmail service and has, in fact, already appointed a special commission to study the question and report to the President."

It is obvious that in order to protect the present position and future development of the U. S. airmail network, both as a business and effective carrier of airmail between the U. S. and these countries, immediate steps must be taken to preempt the Bolivian route for Pan American-Grace Airways. The establishment of a complete third service from the U.S.A. to Buenos Aires, via La Paz (Bolivia) and Córdoba (Argentine), would be the most effective way to meet this serious menace, as not only would the establishment of such a service effectively forestall the attempt of foreign lines to parallel the existing U. S. mail routes along [fol. 4914] the West Coast, but would at the same time materially improve the U. S. mail service to the West Coast of South America and Buenos Aires. That increased frequency and reduced time contribute materially to the increased use of airmail service is clearly evidenced by a statement recently made by the chairman of the Imperial Airways when he said:

"*The majority of that increase was due to the rapid growth in Empire airmail which had risen 78% in the year, due in part to the doubling of the frequency of service and in part to the substantial reduction in airmail rates by the General Post Office.*"

14 third
15 service
16 west coast
17 and
18 wish-es to
19 confer
20 with us/me
21 early ?
22 opportunity
23 after
24 his
25 arrival
26 WASH(ington) (X)
27 January 15th
28 JDM (MacGregor)

Mr Roig:

[fol. 4918]

W. R. GRACE AND COMPANY EXHIBIT 90

February 5th, 1937.

Honorable Sumner Welles,
Assistant Secretary of State,
Department of State,
Washington, D.C.

Dear Mr. Welles:—

We are informed that the Condor System which operates the German air service in South America has applied to the Chilean authorities for a permit to operate a second trip each week between Santiago and Buenos Aires. That will make two trips a week for the Germans, one for the French and five for Panagra. Panagra now receives pay on only two of these trips but maintains the other trips for the purpose of fortifying its competitive position.

Panagra is also advised that Fritz Hammer, a high official of the Lufthansa group, which controls the Condor Syndicate, who is now in New York, intends to proceed shortly to Guayaquil and that this interest has taken a

house for two years in Quito. Also that persons very close to him have stated that the Germans plan to parallel Panagra's west coast service and also to operate from Guayaquil to Quito.

As you already know, we have had reports of the Germans plan to operate from the East Coast up the Amazon through Manaos and Iquitos to the Pacific Coast.

[fol. 4919] Panagra have also been advised by their representative in Colombia that the Dutch K.L.M. has obtained a permit from the Colombian Government to operate air-mail, passenger and express service between the Dutch West Indies and Barranquilla.

I send these items of information as indication of the extreme activity of European aviation enterprises.

Sincerely yours,

[fol. 4920]

W. R. Grace and Company Exhibit 91

PERSONAL

NEW YORK,
February 27, 1937.

Mr. A. B. Shea,
LIMA.

Dear Mr. Shea:

Thank you very much for your personal letter of February 20th.

I shall be very interested to know the result of the informal discussions you have with Recavarren concerning the Iquitos extension.

I am quite disturbed about the activities of the Germans. I presume you have heard that SCADTA is advertising that it will establish service between Bogota and Quito during this month. I understand Hammer has secured some

I told him that as far as I could see, they considered there is too much Grace intervention, going on to say that if this were a fact, which I did not admit, I felt convinced that any Grace intervention was beneficial rather than destructive; conversely, I added that if there was too much Grace intervention it must be admitted that there was also too much Panair intervention and that I was prepared to show that the latter condition was in many respects destructive to the normal development of Panagra's operations. I said that we now have about half-a-dozen reports, including reports from Panair's own people, all agreeing unanimously on the feasibility of running the Northern Section overland and that the idea of linking this up with any organization chart or some other quibbling over the form in which cables are handled or any restrictions placed upon the general manager, if this indeed be the case, was just too ridiculous [fol 4927] to merit discussion and that while I was not competent to have much of an opinion on Priester's statement with regard to the unpreparedness of our pilots to run planes overland in Colombia, it was my opinion that first we ought to decide whether in principle both partners agree that Panagra's Northern Section should be run with land planes over the route indicated, adding that once this is agreed to, which we wanted to decide now and not later on, it is up to Priester or Juan or somebody else to go down to the Coast to confer with Harris to decide on a program to get our pilots thoroughly trained for that operation.

At this juncture I mentioned that there was quite a difference of opinion in this respect, as from all appearances it seems that our pilots are trained *now*, but that if this is not the case this question would have to be worked out between our operating staff on the Coast and Priester or someone else of Panair, as we are not prepared to get into an indefinite controversy on this point. I said that while this is being done we should take immediate steps to ask for permits necessary to operate this route overland, my feeling being that this feature, plus the additional education which the pilots may or may not require, should be completed almost simultaneously so that in the near future land operations can be started.

I went at George rather strongly, telling him that I knew how distasteful this conversation must be to him and that we are not prepared to go on in this childish way indefinitely.

Before the conference was finished I had to leave for Washington but I talked to Roig this morning, who seems to have been equally incensed over Juan's attitude, and he just told me that he intends to write a strong letter on the whole subject to Sonny Whitney, with a copy to each Director of Panair.

[fol. 4928] Roig will no doubt talk to you about this today or tomorrow but I thought I would give you the high spots of the conversation so that in a day or two we can exchange ideas. The situation is becoming intolerable and a break is imminent.

Sincerely yours,

/s/ A. GARSI

[Handwritten notation—P.S. Since dictating the foregoing I have visited ~~Harlle~~ Branch, and amongst other things also talked Panagra, explaining to him in particular the above situation with reference to Columbia and telling him that Juan is obstructing every move that would tend to improve the air service to BA via the West Coast. He understands that situation thoroughly. A.G.]

ing to leave him in charge of operations and supply him with the money with which to purchase multi-motored equipment and extend his operations. Especially, because of the added prestige he would gain through becoming an international operator by means of traffic agreements with Companies operating in Bolivia to the south, and Ecuador and Colombia to the north.

It will be seen, therefore, that the German plan to encircle South America can be consummated at an early date.

Pan American Airways System has, so far, maintained a privileged position, but it has not heretofore been faced [fol. 4924] with a concerted attack sponsored by a European Government. If we intend to maintain our position, it will have to be by increased frequency and the use of the most modern equipment. In addition to the German plans, I am apprehensive that other European nations will appear on the scene before long.

A recent dispatch from Rome states that, upon the expiration of the Argentine contract with Air France, it will not be renewed and that in its place a contract will be signed with the Italian Government by which Italian Civil Aviation have obtained a five-year contract for running a service from Buenos Aires to Uruguay, Paraguay, Chile, Bolivia and Patagonia. The dispatch states that the negotiations were begun in Buenos Aires by General Aldo Pellegrini, Director General of Aviation, and were concluded by Premier Mussolini in Rome, so that, again, we have a foreign Government to deal with. I need hardly state that an Italian organization would be a much sterner competitor than Air France, not only because the Italians have shown their ability to organize a first class air force, but Argentina has been colonized by Italians and is, therefore, related to Italy by blood ties.

Other European activities are in the wind. K. L. M. has recently received a permit to connect Curacao with Barranquilla. During my recent visit to Buenos Aires, I conversed with a newspaper man from London who told me that the talk in newspaper circles in England was that British Imperial Airways were considering a service to South America

in competition with Air France and Condor across the South Atlantic. I think European nations are altogether apprehensive of the increasing trade trend between the United States and South America, due largely to the advent of rapid transportation. They are also apprehensive of the results of the Peace Conference with its show of solidarity and they will not give up their present dominating commercial relations with South America without the fiercest kind of a struggle, with no holds barred.

(Signed) J. D. MacGregor.

[fol. 4925]

W. R. Grace and Company Exhibit 93

[Handwritten notations—12/15/37—Unable to locate the beginning of letter—12/14/52 E]

Panagra: Roig and I had a couple of hours' talk yesterday with George Rihl and the upshot of the conversation is that Juan will do everything possible to block the contemplated overland development in the northern division.

[fol. 4926] At one stage he said that according to Priester our personnel is untrained to operate land planes over that territory and that it would take at least a year before they would be properly educated; furthermore that before deciding anything about this Colombian development we would have to clear up other matters, such as the organization chart, the question of having Panagra do its own cabling, etc., etc. He finally produced a memorandum purporting to summarize these and other points and I finally lost my temper.

They claim that there is too much Grace interference, that the General Manager of Panagra is not allowed to function the way any other general manager of a company without a president functions, etc., etc. George felt very sheepish and the whole conversation was undoubtedly very distasteful to him, particularly as it was apparent that he himself did not believe any of the stuff he had to serve up.

[fol. 4929]

W. R. Grace and Company Exhibit 94

Minutes of Adjourned Special Meeting of the Board of Directors of Pan American-Grace Airways, Inc., held at the office of Pan American Airways, Inc., Chrysler Building, New York, N. Y. on the 27th day of January, 1938, at 12.45 P.M.

PRESENT:

Messrs W F Cogswell
A Garni
H P Morris
R H Patchin
H J Roig
J T Trippe
E E Young

being a quorum of the Board.

Mr J D MacGregor, Vice President and General Manager of the corporation, was also present.

Mr Trippe called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr Cogswell, Secretary of the corporation, recorded the minutes.

Mr Roig called for the vote on his resolutions regarding overland operation in Colombia as set forth in the minutes of the meeting of December 23, 1937. A vote upon such resolutions having been had, the same were declared adopted, Messrs Cogswell, Garni, Patchin and Roig voting in favor of same and Messrs Morris, Trippe and Young not voting.

Messrs Morris, Trippe and Young desired to have their views appear in the record as follows:

In view of the recommendations of the Vice President [fol. 4930] in Charge of Operations, as submitted to the Board by the Vice President and General Manager, that

the service now operated on that sector of the present West Coast route between Cristobal, C. Z. and Guayaquil, Ecuador be transferred to operate via Cali, Colombia, and Quito, Ecuador; and in view of the support of this recommendation by Messrs Cogswell, Garni, Patchin and Roig, Messrs Morris, Trippe and Young did not wish to delay a move which the management has recommended. They, therefore, refrained from voting against the resolutions offered.

They stated that, in their opinion, the continuance of operations via a coastal route, contemplated in the Kellogg-Olaya Treaty between the United States and Colombia, would be to the best interests of Pan American-Grace Airways, Inc.

They pointed out to the meeting that, while they felt the route via Cali and Quito could be established, they are of the opinion that the more direct route between Cristobal and Guayaquil, following the great circle course (or with an intermediate stop at Buenaventura if desired), would:

(a) In the aggregate, prove to be faster, as well as shorter;

(b) Be preferable from a technical operating standpoint;

(c) Permit greater schedule regularity and fewer interruptions on through service between Cristobal and Ecuador, Peru, Chile, Bolivia and the Argentine; and

(d) Over a period of time be more profitable to the company commercially, on account of the greater volume of total traffic that would accrue to it, [fol. 4931] with especial reference to through passenger traffic between the United States and Ecuador, Peru, Chile, Bolivia and the Argentine.

They further pointed out that if the traffic which might be developed between the West Coast city of Cali and Cristobal was an objective in the plan for the interior route, they felt that such traffic might best be developed by

means of a separate shuttle service between Cristobal and Cali, thus providing full capacity of equipment as compared with the limited capacity that would be available by including Cali as a point of call on the more circuitous through service.

Messrs Morris, Trippe and Young also pointed out that although their fellow Directors present have in the past indicated as a matter of policy that they did not view with favor a program contemplating large four-engined equipment operating through to Guayaquil on a charter or other mutually cooperative basis with Pan American Airways on one or more weekly round trips on account of the possibility of prejudicing Pan American-Grace's position as an independent company, they were still of the opinion that such a program was feasible and would be to the best interests of Pan American-Grace Airways as well as to the general public, in view of the greater capacity and efficiency of flight equipment thereby possible.

Messrs Cogswell, Garni, Patchin and Roig made the following statement on the record with respect to their vote [fol. 4932] in favor of the resolution:

While regretting the necessity of acting without the full concurrence of their associates, Messrs Cogswell, Garni, Patchin and Roig feel that the welfare of the service calls for action without further delay and that the recommendations of the management, being sustained by the reports referred to below, should be adopted by the Board.

The land operation over Colombia has been the subject of careful study over several months. The conclusions reached by the management are based on detailed studies and reports. The Company has the planes with which to institute the service. We are unable to concur in the conclusions of our associate directors based on what they believe to be the commercial advantages of the plan they propose.

There being no further business, the meeting adjourned.

/s/ J. T. Trippe
Chairman of the Meeting

/s/ W F Cogswell
Secretary

[fol. 4933]

W. R. Grace and Company Exhibit 95

Letter No. 40

January 28, 1938

D. S. Iglehart, Esq.,
Delray, Florida

Dear Mr. Iglehart:

PANAGRA-COLOMBIA

Referring to our telephone conversation, I enclose Minutes of yesterday's meeting, copy of Resolutions as adopted, —also a further Memorandum from Eddie Allen.

At yesterday's conference, Trippe submitted figures intended to show that the big boat (S42B) operation flying on the Great Circle Route direct from Cristobal to Guayaquil, which makes a saving of about 250 miles as against the overland route, could be operated for about the same cost as the overland route and urged that we at least give this a trial for three months before going to the overland operation. His figures have to be adjusted, of course, to take up the loss in mail pay from the shorter mileage with the result that taking everything into account, it looked as if the big boat operation might cost about $90,000 minimum more per year than the overland route. In practice, Garni and I feel it would be more than this, but even on this basis it would mean we would have to get an average of two additional passengers per trip over every mile flown on the entire route to B.A. in order to be on the same financial basis as the land operation.

The advantages which Trippe claims for his plan are:

1. That with Panair operating one S42 direct from Miami to Guayaquil and Panagra operating a second S42 over the same route all the way to Miami, we would get an efficiency of operation which would offset what would otherwise be the prohibitive expense of Panagra operating big boats between Cristobal and Guayaquil.

gone as far as they consider their equipment would justify, but I feel that to purchase this equipment and place it in operation in land so far distant from R. C. A. headquarters would entail a burden which, at this time, I am unwilling to assume or to have you assume.

I have prepared figures for Operations showing that even by paying Panair between $100,000 and $120,000 per year for radio service, and operating multimotored equipment throughout our line, we can still make healthy profit. Frankly, I am unable to fathom the reason for the Grace Directors' insistence that we buy R. C. A. equipment. Their position is exactly the opposite to the position they have consistently taken with regard to other equipment. Our flying equipment must be standard and must have been proven by continual and efficient service by other operators. Why should we not be consistent with radio?

In addition, to operate our own line, will entail the further delay consequent upon having to negotiate radio rights in Argentine, Uruguay, Colombia, and Paname, in which countries Panair already has rights.

Referring again to the contract with Panair, there is a great deal of what, to my way of thinking, is useless verbiage, used by our respective lawyers to endeavor to cover every conceivable contingency. As a practical matter there would be no trouble and we would get the service. I cabled you today that we are still studying the matter.

[fol. 4937] I also recommended the purchase of the two Panair Fords, although I was only able to secure them at a price of $20,000 each. If we fly them to Lima, fix them up for our line, and put in high speed equipment, we would still have two practically new Fords at $30,000. each, or at approximately half price. A decision on this has been held up pending the solution of the radio question, because we cannot operate Fords in Chile without radio. However, I have insisted that the ships should be purchased while radio is being discussed, so that when a decision is finally reached, the ships will be ready to operate, and our passenger service south of Arica can be commenced.

I hand you also a copy of a letter written by Mr. Patchin, outlining the Grace position, and also a copy of Mr. Trippe's answer thereto.

You will please treat this entire letter and its attachments as confidential.

Very truly yours,

J. D. MacGregor.

JDM/Q
Encs. by airmail.

[fol. 4938]

W. R. Grace and Company Exhibit 97

#492

LIMA, June 14, 1931 PERSONAL #351

Mr. MacGregor, New York

PANAIR VS RCA RADIO SCHEME

Receipt is acknowledged of your personal #87 on the subject of radio. You did not enclose the letters from Mr. Patchin to Mr. Trippe and the latter's reply nor the RCA letters of April 18, and April 21; but Miss Quinn forwarded them in the following mail.

Judging from all the information you have given me to date, it would seem that there are two ways to judge this matter. First we are anxious to go immediately into passenger operation south of Arica. For this operation in Chile we desire radio installation in multimotored airplanes. It is therefore desirable for us to immediately secure radio equipment which can be put on an operation basis at once. This points most decidedly to a contract with Panair.

The other alternative is to develop our own radio program with the minimum of expenditure without the hurry which would seem to be required by an immediate opening of our passenger service. This would seem to point toward RCA or other source of supply with the building up of our own radio staff.

[fol. 4939] Both schemes have definite advantages in my opinion but taking everything into consideration I rather favor the second scheme.

If you do not already know it, Shannon is quite a radio expert and it might well work out that when he takes over his work as my assistant that he might specially handle radio problems in addition to his general duties.

I believe that we can develop competent radio operators among our flight mechanics and/or pilots or stewards so that we can eventually have radio without the usual disadvantage of a radio operator who does not do other work.

I agree with you that if we go into the radio business ourselves we will have lots of grief and this with our present limited personnel is decidedly to be avoided if we can justify the difference in what it will cost us to have the work done by someone else and what we estimate we can do it for ourselves. Judging from Panair's figures, it seems to me that they will be making a direct profit of at least $20,000 a year not to mention the use they would have of the joint stations at Montevideo, Buenos Aires and Cristobal for other than Panagra business.

Going over the estimate of radio investment based on data of RCA proposed investment which you attach to your letter, I want to point out the following. At present our radio traffic thru Cristobal is handled, both in and out, [fol. 4940] by the Navy. There is no reason to believe that we could not continue this arrangement. Consequently no investment for a station in Cristobal is required. This would be a saving of $7050 without counting additional receiver. I do not understand why you added an additional receiver at each one of the ground stations. The elimination of this item would be a saving of $3276.

The other ground stations seem to be safely figured with the exception of the Mendoza station where I believe we should add an additional $2000 to cover the cost of the modulator units for telephony at this station. You will note that the Radio Corporation quote $1500 F A S for each

modulator unit and I estimate that the additional $500 will cover the other miscellaneous costs. This would make a total ground equipment cost of $8326 less than you show in your estimate. That is a new total of $59680.

As I have previously written you I see no reason for getting more than 12 plane sets no matter whether we buy our own or have Panair furnish them for us. Under the RCA scheme this would be a saving of $5760 giving a total investment in plane sets of $23,040. The combined figure of $82,720 would include the cost of ground and plane sets, transportation, duties, installation, etc.

[fol. 4941] With regard to your estimated operating cost I note that under the Panair scheme, they only allow $3600 for what corresponds to your chief engineer whom you have listed at $8500. They allow $9900 against the $10,000 you list for assistant engineers. They allow $2724 against the $5000 you list for engineer's travel. Their figure for ground operators is practically the same as yours altho under the scheme I point out above only eight ground operators would be required, thus making a saving of $2550 per year. I note that you have taken the same plane operators salary and travelling expenses that they have. Panair make not provision for the six service men which you list at $15300 and I agree with Panair that these men do not seem necessary. On the other hand Panair carries $3300 more insurance than you show and $4000 more for miscellaneous parts and expenses than you show. In other words, they show a yearly operating cost of $86,158 not including depreciation against your $120,641 which includes $19,361 depreciation.

Under my suggested scheme the operating cost not including depreciation would be $80,000 per year, since I propose to eliminate the chief engineer's salary (using Shannon as head of radio) and one ground operator salary.

[fol. 4942] In conclusion I believe that there is nothing fundamentally wrong with Panair's radio proposal except that it will be in the long run more expensive for Panagra. It has the distinct advantage that it can be put into operation almost overnite for our entire system; but it does put our radio communication completely in the

[fol. 4934]

2. That the attractiveness to travellers of the water route as against the land route would result in a large increase in traffic by air from the United States to Guayaquil and points south which would more than offset the loss of Colombian traffic

3. That the water route would be subject to fewer schedule delays on account of weather.

4. That this shorter and quicker trip to Guayaquil would make more readily feasible a one day operation to Lima.

5. That if we were adverse to giving up Colombia entirely we could at least serve Buenaventura by operating one of the two trips per week with the S43 calling at Buenaventura and if we insisted on serving Cali that could be served in some rather vague way by a shuttle service. At one point he also suggested that they take care of Colombia by selling us part of Scadta and Umca.

There were other points discussed, but these are the principal ones about which the discussion centered. I need not trouble you with our answers to each of these points in detail. They will be obvious to you. In a general way, however, our position was that the expense of his proposal would in practice be a good deal more than the land operation for many obvious reasons and that if we served Colombia at all in either or both of the methods he suggested, the differences would be astronomical; that we would be incurring this additional expense merely to provide additional payload which was not called for by traffic possibilities and at the cost of giving up effective service to one of the most important countries on our route.

Sincerely yours,

Enclosures

[fol. 4935]

W. R. Grace and Company Exhibit 96

PERSONAL #87

NEW YORK,
June 2, 1931.

Mr. H. R. Harris,
Lima, Peru.

My dear H. R.:

Please don't turn a handspring when you read the attached contract with Panair for radio service, which I recommended to be accepted at once. So far, no agreement has been reached, although there is another Directors' Meeting next Friday.

Grace & Co. Directors have declared themselves against using Panair services. They prefer to buy from either Panair or R. C. A. and operate themselves. I am not able to agree with them because Panair is prohibited from selling its sets, and the R. C. A. telegraph telephone set has not been operated in any commercial airline, to date.

I prepared figures for the Board of Directors, a copy of which I attach, showing that the purchase from R. C. A. of the necessary equipment, on the basis of that Company's sales offer, would mean an immediate investment of $96,000. Even this figure is not complete because it provides for no spare transmitters for use when the original transmitter is under repair.

In order that you may have complete information, I hand you copies of R. C. A. letters of April 18th and April 21st.

The acceptance of the Panair offer would insure us complete two-way communication, at least as cheaply as we could install and operate it for ourselves, and would relieve us of the responsibility for the successful operation of the service. Panair accepts a penalty if they do not provide 98% efficiency in service.

[fol. 4936] The R. C. A. equipment is not guaranteed in this fashion. R. C. A. is anxious to make this sale and have

hands of our associated Company who have very distinctly shown in the past that their idea of co-operation is on a cost plus basis.

Personally I incline to a modified RCA scheme along the lines I have outlined in this letter. This may take us six months longer to install over the whole line but will give us in the end control of our own communications and will, I feel sure, work out better for Panagra in the long run.

Pending final decision on radio, I believe that we can secure a waiver from the Chilian Government to allow us to put in our international passenger service with our multimotored machines without radio. It may be necessary for us to sell only six seats in our Fords in order to technically secure their consent but I rather think that the number of times we will sell more than six seats on any one trip in Chile will be limited for some time to come.

[fol. 4943] I have neglected to mention that RCA have, thru their hookup with All America Cables, competent radio engineers at most all points on our line so that we would have very little difficulty in getting expert engineers for RCA equipment if we needed them.

I agree with you that a combined telephone-telegraph set is desirable over the Andes. It may also be desirable to put a ground telephone transmitter at Buenos Aires to handle the Montevideo-Buenos Aires flights. However this is an added refinement that need not be taken up at present.

You mention the difficulty we would have under the RCA scheme in negotiation for radio in Uruguay, Argentine, Colombia and Panama. I see no reason for negotiating radio rights in Panama and see no reason for difficulty in negotiating radio rights in Argentine or Uruguay. I know nothing about Colombia.

/s/ HAROLD R. HARRIS

HRH/CBR

cc second mail (no steamer copy)

[fol. 4944]

W. R. Grace and Company Exhibit 98

#495

Minutes of a special meeting of the Board of Directors of Pan American-Grace Airways, Inc. held at the office of Pan American Airways, Inc., 122 East 42nd Street, New York, N. Y., on the 6th day of July, 1931 at 4:30 o'clock in the afternoon.

PRESENT:

Messrs. W. F. Cogswell
R. H. Patchin
H. J. Roig
J. T. Trippe

being a quorum of the Board.

Mr. J. D. MacGregor, Vice President and General Manager of the corporation, was also present.

Mr. Trippe called the meeting to order and on motion duly made and seconded was appointed Chairman of the meeting. Mr. Cogswell, Secretary of the corporation, acted as Secretary of the meeting.

The minutes of a special meeting of the Board of Directors held June 10th, 1931, were read and approved.

Mr. MacGregor submitted to the meeting copy of waiver of 20¢ per mile from the contract rate of pay on the second round trip per week on F.A.M. Route No. 9 for the fiscal year beginning July 1, 1931 only, which had been executed under date of June 26, 1931 in the name of the corporation by himself as Vice President and Mr. Cogswell as Secretary. On motion duly adopted, the execution of this waiver was ratified, approved and confirmed.

The Secretary presented to the meeting copy of letter dated July 25, 1930 whereby this company agreed to indemnify and save harmless Grace y Cia. (Chile) S. A. from

[fol. 4945] and against liabilities and expenses which might be incurred by reason of this corporation not being registered in Chile, such agreement being limited to obligations incurred on or before July 8, 1931. On motion duly adopted, the proper officers of the corporation were authorized to execute an agreement in similar form limited to obligations incurred on or before July 8, 1932.

On motion duly adopted, it was resolved that the following expenditures at present capitalized be charged off to expense:

W. P. Jacob's salary and expenses	$10,547.12
Wasp motor donated to Chilean Government	6,928.20
Part fee paid to Dr. Vicente Lopez (corresponding to year 1930)	2,501.68
Part cost of cables	7,420.76

that the following expenditures at present charged off to expense be capitalized:

Part 1929 bill—W.R.Grace & Co., Chile	$10,000.00
Part 1930 bill—W.R.Grace & Co., Chile	7,500.00
Additional J.D.Summers' expenses	4,186.20
Part 1929 bill—Guayaquil Agencies Co., Guayaquil	2,600.00
	$24,286.20

and that after the foregoing adjustments the expenditures which have been capitalized be classified as follows:

Nature of Item	*Concession or Contract*	*Amount*
Payments to Root, Clark, Buckner, Howland & Ballantine	U.S. Mail	$16,578.54
Washington Office Jan 1/May 15, 1929	"	4,000.00
Proportion expenses J.D.MacGregor at Panama	Panama	2,144.38
Survey flights	Panama	4,839.90
"	Colombian	4,839.90
"	Ecuadorean	4,839.90

Nature of Item	*Concession or Contract*	*Amount*
H. C. Willcox	Colombian	19,068.33
Legal fees Ecuador	Ecuadorean	5,722.06
Part 1929 payment Guayaquil Agencies Co., Guayaquil [fol. 4946]	Ecuadorean	2,500.00
Purchase Huff Daland Concession	Peruvian	15,000.00
Cables	Chilean	1,200.00
"	Argentine	368.16
Part payment W.R.Grace & Co., (Chile)		
1929	Chilean	10,000.00
1930	Chilean	7,500.00
J. D. Summers (1929)	Argentine	7,323.89
	Uruguayan	3,442.51
Vicente Lopez (1929)	Argentine	5,000.00

It was also resolved that the foregoing be written off over a period of ten years from the date of the United States mail contract or the life of the respective concessions or contracts if there should be an earlier expiration date therein.

Mr. MacGregor submitted to the meeting letter from Pan American Airways, Inc. dated June 25, 1931 and draft of proposal enclosed with said letter, whereby Pan American Airways, Inc. would sell to Pan American-Grace Airways, Inc. equipment for five complete radio ground stations and fifteen aircraft sets at the price of $50,347.50; also, at the option of Pan American-Grace Airways, Inc., supervise and assist in the installation of the radio system for a flat fee of $17,500 and provide or cause to be provided a service from ground stations at the Canal Zone or Panama, Buenos Aires, Montevideo and Buenaventura at a specified percentage of the cost thereof. On motion duly adopted, it was resolved that Mr. MacGregor be authorized to accept this proposal in its entirety in behalf of this corporation provided Pan American Airways should further agree: (1) to sell this corporation such spares and parts accessory to

MICRO CARD
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22
12-21-2
MATTHEW BENDER & COMPANY
6-3-6
microcard

In the first place, it is necessary that we secure at the earliest possible moment necessary authorization from the Peruvian Government for the installation of our ground sets and the establishment of our radio communication. This is the point where we need your assistance; not only to get powers as broad as possible but also to get our rights promptly. In view of the improvement in the service which radio will provide and the expense which we are incurring to give Peru as fine an air service as there is anywhere in the world, there should really be no difficulty in getting the necessary rights but having in mind the difficulties we have had in location of facilities at Las Palmas, I am anxious that the campaign to get our radio rights should be carefully thought out before it is launched and pushed vigorously and in the manner best calculated to get these rights promptly. Pan American will send their experts to Peru not only to assist in the Governmental negotiations but to [fol. 4949] erect the ground stations and put the system in operation. If we are delayed in getting necessary permits and accordingly have to keep these people on the Coast for a long time the expense of this work will be very greatly increased. This we are naturally most desirous of avoiding. Mr. Harris will be receiving official advices from the Panagra New York office of the terms of our arrangement with Panair from which he will see how important this is and the corresponding necessity of having the work laid out to the best possible advantage and securing our Peruvian rights as promptly as possible. I would be glad if you would discuss the matter fully with him as I think Mr. Miranda can be of a good deal of assistance at this juncture.

The other point which I am particularly concerned about is that the transition from the installation by Panair to the operation by Panagra should be accomplished in a manner which will remove all friction and insure effective operation. As a result of the very exhaustive study of the matter we have made here we are convinced that Panair's radio system is by far the best obtainable for our purpose. We propose to engage shortly and send promptly to the Coast a man to take charge of Panagra's radio operations. It is our intention, if possible, to get a man familiar with the Panair system and practices and in sympathy with them.

Having decided to install their system there would be no point in taking on someone to run it who thought some other system was better. It will be time enough for us to make our own improvements after we have had some experience with what Panair have already done. I consider it of the utmost importance that this man be engaged and on the job when the installation work is in progress so that he can inspect it and accept it for us and will be satisfied that it is properly installed. We do not want any alibis for defects in operations based on errors in installation. If we take on a Panair man it will, of course, be necessary for him to understand thoroughlily that from the day he goes on our payroll he is working for us alone and I have no doubt that Harris can make this very plain and handle the matter satisfactorily from the outset. Incidentally, Harris will, of course, be the man responsible to the Directors for the installation and operation and whoever is in immediate charge will be responsible only to Harris.

I am writing this letter to you rather than direct to Harris, in the first place, because I wish to ask your fullest cooperation along the lines indicated and, in the second place, because I do not think it suits to have directors carrying on separate correspondence with the Vice-President in charge of operations. You will, of course, discuss the matter fully with Harris as all steps taken will have to be in conjunction with him and so far as I am concerned I have no objection to his seeing this letter.

Very truly yours,

the equipment covered by said proposal as may from time to time be required, at the fair market value of similar [fol. 4947] apparatus manufactured by others, provided that it should have the same in stock, and (2) to cooperate so as to keep the expenses of this corporation at a minimum if it should develop that it would be impossible to install all of the ground stations within the period of 120 days referred to in Part II of the proposal, and in this connection, if practicable, to temporarily withdraw and assign elsewhere personnel engaged in the work, and extend the said period of 120 days for the number of days during which said personnel is withdrawn, only charging this corporation for the necessary lost time and expenses involved in such procedure.

Mr. MacGregor reported to the meeting that there was an unexpended balance of approximately $6,000 of the total sum of $34,000 which had been authorized for advertisement and propaganda for the year commencing July 1, 1930. On motion duly adopted, the proper officers of the corporation were authorized to spend the sum of $40,000 for advertisement and propaganda for the year commencing July 1931; this amount of $40,000 to include the aforementioned unexpended balance of $6,000.

There being no further business, the meeting adjourned.

/s/ J. T. TRIPPE
J. T. Trippe
Chairman of the Meeting

/s/ W. F. COGSWELL
Secretary

[fol. 4948]

W. R. Grace and Company Exhibit 99

#496

New York, July 7, 1931

H. H. G. Redshaw, Esq.,
Lima, Peru

Dear Redshaw:

At the Pan American-Grace directors' meeting yesterday we authorized the installation of complete two way radio over our entire line. The matter has been delayed a good while owing to basic difference of opinion in the Board on the question whether we should own and operate our own radio or engage Pan American to install and operate the system they in this case, of course, being the owners of the equipment. It was my understanding from my talks with Mr. Harris that he preferred a system under which we owned and operated our own radio system and I have accordingly held out for an arrangement of this kind which we have now succeeded in working out. I judge from some of Mr. Harris' correspondence which I have seen that he has felt that some of the directors were opposing the installation of radio. This is quite incorrect as the board has been unanimously in favor of radio. The delay has been occasioned very largely by the effort to get the radio set-up in the form which I understood Mr. Harris favored. Incidentally, I was in entire sympathy with his opinion.

Under the arrangement we have made Pan American will install the system and supervise the inauguration of the service so that our organization may get the full benefit of their experience in this rather technical business. We are making a considerable expenditure in order to secure this service. I consider the expenditure money well spent but am very anxious to see that we get the full benefit of it. In order to do so two things are necessary and in one of these at least it is necessary for me to ask the fullest cooperation of the Lima management.

(e) And in the face of the foregoing he writes the New York office, under date of November 26th, the following:

> "In one of your letters I recall you said that you would not furnish my room until I returned. This will be your authority to proceed to acquire the necessary furniture. The room should be carpeted with some rich dark color. Dark brown, or dark green. I do not know the size of the room, but understand it is a corner room with good light, such as I had with P.A.A. Therefore there should be a roll-top desk, with ample size swivel chair and a good-size table, with glass top so that I can work at either desk or table, without leaving the chair. There should be an additional table for examining maps and plans. Two or three good-looking chairs for visitors. A large map of South America should be on the wall. Also several framed pictures of our equipment, such as were taken in Lima of the Fords. The Fairchild flying over Misti, would be appropriate. Be sure the necessary telephones and buzzers are installed. Also wastepaper baskets and two cuspidors, with rubber mats on each side of the table. I want the room to be a credit to the Company, and suitable for the Chief Executive. Important visitors and executives from other companies will frequently come to see me and I should not wish them to have cause for criticism."

I believe the most serious mistake this company has made to date was the purchase of five Fords. Mr. MacGregor strongly recommended this course before he left for the Coast and was inclined to give no weight at all to my suggestion at that time that we purchase less than five. When I was in Panama in June and became convinced after a close study of operating costs, that five Fords were a serious mistake, and cabled New York

to endeavor to cancel some of these Fords I got no pathy for this idea from Mr. MacGregor. On the trary, even after he left Panama, I cabled him Panama (No. 2) to which he replied as per cabl [fol. 4953] tached (No. 3). With his concurrence prompt action at that time we could probably have celled at least two of the Fords instead of one.

3. From the foregoing as well as from my extended sonal conversations with Mr. MacGregor at Pa when I endeavored to get his ideas regarding capital operating budgets for this company, I have reached definite conclusion that he is essentially of the pron and publicist type rather than the organizing and agement type which we require. I do not for a mo depreciate the value of the former qualities in a business like ours, but this is not the job for whic are primarily looking to Mr. MacGregor. We are ing to him to build up an organization and to ma our business along sound business lines. In my opi he has no adequate qualifications to perform eithe these functions. I very much doubt if Mr. MacGr has any clear idea at this moment of the actual fina position and operating results of the company. D his entire absence he never at any time gave any cation in any of his cables of any concern or intere these matters.

4. Mr. MacGregor's manner and personality are no culated to get the best results in South America. methods which he apparently found successful in Central American countries have not worked out well in South America. In Panama he antagonize least two very important people in Mr. Peck, the mercial Attache at the American Legation and Mr. the Postmaster General of the Canal Zone, who is [fol. 4954] the correspondent of the New York T In Chile his methods developed very great antago on the part of the Chilean authorities, as he hi tacitly admits in his letters and as is strongly cont by private letter from our manager, Mr. Metzner 4) and by reports we have received from wholly o and disinterested sources.

[fol. 4950]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

#34

DOCUMENTS

WRG 100 thru WRG 131

[fol. 4951]

W. R. GRACE AND COMPANY EXHIBIT 100

[Handwritten notation—12/28/29]

STRICTLY PRIVATE AND CONFIDENTIAL

MEMORANDUM FOR MR. HOYT (DIRECTOR, PAN AMERICAN-GRACE AIRWAYS)

MR. MACGREGOR

1. Mr. M Gregor went to South America to get our business t e organized. These are the results of his trip:

(a) He left Panama without having t d up the necessary ends to give Pan American-Grace Airways operating rights in the Canal Zone, Colombia or Panama or taking any steps or making any recommendations looking to the taking over by Pan American-Grace Airways of the Panama/Guayaquil run. Apart from conferences with

Mr. Trippe and Mr. Roig, these matters were the only Pan American-Grace business of major importance which MacGregor had to attend to at Panama.

(b) From Panama he went to Chile, his particular mission there being to straighten out our relations with the Government and get our concession in order. He was quite unable to accomplish this and finally left Chile for the reason, as he himself stated in his gable of October 26th:

> "I am of opinion there is better chance modifying decree if I leave Chile sentence Think my leaving Santiago will clear atmosphere and permit W. R Grace & Co officials negotiate modification sentence They are thoroughly familiar (with) your instructions and can conduct negotiations less formality-ies we all consider inadvisable to force government to make decision all disputed points."

(c) Governmental difficulties in the Argentine had been largely removed before Mr. MacGregor went there so his only mission was to organize our business at this point. Beyond recommending the employment of Delfino & Co., steamship agents, on a five year contract to look after our interests in Buenos Aires, upon terms which we have not found practical, his accomplishments by way of organizing our Argentine business may be judged from Mr. Summers' cable to Mr. Trippe attached (No. 1).

(d) He spent only a few days in Bolivia where he submitted a proposal prepared in New York without any suggestions from him and left without waiting for the outcome and predicting failure because he "had not been able to reach La Paz sooner as in that event there would have been no difficulty". (See his letter of November 25th)

TRANSCRIPT OF RECORD

11

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
APPELLANT,

vs.

UNITED STATES.

No. 47

UNITED STATES, APPELLANT,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY, 1962

arrangement is made with reference to facilities on the Isthmus and the Colombian concession, the transfer to Pan American Airways Company would be without compensation to Pan American except for out of pocket expenditure.

The matter as to where the pilots on the Isthmus should live is one that should be dealt with by the Operating Vice President. My own experience is that in places like Panama, where there are excellent hotels and boarding houses, it is preferable to let men live where they like, rather than to go to the expense of providing a mess house for them, which they very seldom appreciate. This is a detail which should be attended to by the Vice President in charge of operations.

I think it would be a great mistake to organize a complete office in Cristobal and I would not agree to that under any circumstances. The Chief Accountant should be in New York and not in Cristobal. It seems to me that in Cristobal there should be a local traffic man in the same way that there should be in the other two units, but the traffic work should be done individually by the three units, and that, with reference to traffic, although they would keep closely in touch with the Operating Vice President, their responsibility would be direct to New York. Whether the Vice President in charge of operations should have an engineer alongside of him for supervising the work in the three units is a practical matter about which my opinion is not of much value. The point, however, that I want to bring out clearly is that the Cristobal office should be merely one of the three units, and should operate its own unit, in the same way that Lima operates its own unit and Santiago operates its own unit; and, that, although the Operating Vice President makes his headquarters at Panama, he should have no staff there and should spend practically all of his time moving over his operating territory.

I should like to have an opportunity to discuss this all with you provided it is not quite clear, as I think that many of the points brought out are essential ones to the economical and successful administration of this business.

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I have only the kindest feelings toward Mr. MacGregor personally and regret exceedingly to find myself in my present position with regard to him. But considering the matter as we must, purely from the standpoint of the company's welfare, I feel very strongly that our only course, if we are to succeed in this venture, is to secure at once a new General Manager in whom both of the owners of the company can have complete confidence.

Director, Pan American Grace Airways

December 28, 1929

[fol. 4955]

W. R. Grace and Company Exhibit 100X

[Handwritten notation—file] April 18, 1929

MEMORANDUM FOR: MR. PATCHIN
MR. COGSWELL.

I looked over Mr. MacGregor's undated memorandum.

EQUIPMENT

He indicates that a large amount of plant and planes, etc. will be required to do the service, but he gives no figures as to what these would cost or what the inoperating expenses would be. It is to be kept in mind that the Company has a capital of $1,000,000.; that it was estimated that this was sufficient to equip the Company in every respect, and also supply the working capital necessary to carry out the mail contract. I think it would be wise to see that Mr. MacGregor keeps in mind the fact that the Company has a fixed capital; that it is to operate within this capital; and that we are not inclined to agree to increasing the capital or to carrying on an expansion that has been so rapid as that of Pan American Airways.

CRISTOBAL OFFICE.

The way that he has this laid out makes it the head office rather than New York, and I think it is a mistake. My idea

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TRANSCRIPT OF RECORD

Supreme Court of the United States

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APPEALS FROM THE UNITED STATES DISTRICT COURT
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NO. 23 FILED JULY 25, 1961
NO. 47 FILED DECEMBER 1, 1961
JURISDICTION POSTPONED JANUARY 15, 1962

is that the operation should be from distant points that in all matters except the actual operation of the planes these three units should report direct to New York. The only way in which New York can keep adequate control on that business is to have all the cash deposited here, to have accounts kept here, and to have control of expenditure, so all dominated entirely from New York. Sufficient copies should be sent to the Operating Vice-President in Cristobal to enable him to do his work intelligently.

The matter of handling accounts ought to be worked out [illegible] carefully, and my thinking is that the accounts of the three units ought to be handled in our Coast offices and that all cash disbursements should be made through our Cashier's Department. I think the practical way to do this is for us to have a special employee to handle this work in our Coast offices, and that this employee should be a regular part of our staff and entirely controlled by our management. I think that one man in our office in Cristobal, one in Lima and one in Santiago, with possibly one in Guayaquil, should be able to attend to all of this work in an entirely satisfactory way. I don't think that the Pan American-Grace Airways needs to have any independent employees in any of these places, except pilots and mechanics, in other words, men who have to do with the actual operation of the planes. This plan means minimum expenditure and maximum control.

I should therefore have answered Redshaw in that sense and told him that he was to delegate a man of our own staff to handle this work, and that this man should be our employee, rather than have called in the sense that you did.

I think it most important to get this matter of handling of accounting control, of cash and clerical work into the shape that I have indicated and to lay down a definite policy with reference to it at the start.

SERVICE OF PAN AMERICAN AIRWAYS.

I understand that in New York all that would be used would be their technical staff. I understand that if the

Coming back to my observation regarding the rapidity with which most Airway companies decide on expansions, etc., we naturally want to avoid any tendency in this direction on the part of the Pan American-Grace Airways, Inc. and while we do not want to encourage what might be called undue interference with their management we must rely upon you to tactfully guide and generally direct whatever activities take place in the territory under your jurisdiction, so that a sound business like policy is followed with reference to any future developments.

This may look like a disjointed sort of a letter and I admit it is; but nevertheless I want to write to you about our relations with the Pan American Airways, Inc., how well we think of them and what the general tendency is on [fol. 4964] the part of most Airways companies and last but not least, to tell you to keep your ears to the ground with reference to anything that develops in your territory in connection with the Pan American-Grace Airways, Inc.

Yours very truly,

(Signed) A. GARNI

[fol. 4965]

W. R. GRACE AND COMPANY EXHIBIT 104

January 29, 1929.

MEMORANDUM FOR MR. PATCHIN

Do you not think it advisable to arrange that Jacob should come down here at regular intervals; and, in fact, it might be well for him to come down for an hour every day. He could, during this time, go over correspondence and arrange to dictate correspondence to our Coast Houses and do a great deal of the work that is to be done in connection with this aviation business.

Furthermore, I rather think that when Tripp goes to Washington on anything connected with our aviation work, or when you go to Washington, that it is advisable to have Jacob accompany you or him, in order that he will keep

hold of the strings of this business and become gradually educated in it and gradually equip himself to handle all of its phases under your general direction.

I feel that on each steamer we ought to write out to Lima, Valparaiso, Guayaquil and possibly also La Paz, and perhaps a little later to Buenos Aires, letters commenting on what is being done in their territory, making suggestions as to what might be done, asking questions and seeking data that may form the basis for further constructive suggestions and gradually building up the interest and enthusiasm, as well as as guiding the effort of the men in our South American Houses who are attending to this aviation work. A man like Bush is very good, but he is not very full of imagination and he requires constant stimulation and guidance. Jacob ought to be able to handle all of this correspondence and you will decide whether it had better go out of this office or the office uptown.

[fol. 4966]

W. R. Grace and Company Exhibit 105

[Handwritten notation—Rec'd 7-6-32 ans'd 7-8-32]

[Stamp—Via Correo Aereo—Panagra]

Letter No 62

(D.S.I. Trip series)

En route Valparaiso
On board s/s "Boskoop",
June 27, 1932.

H. J. Roig, Esquire,
NEW YORK.

Dear Roig,

LIMA FLYING FIELD

I went over this, and, although the field is a bit rough, I think the whole equipment is a good one and appeared to be working smoothly and effectively. I have an idea that

not lose sight of the fact that we own 50% of the Shares of the company; furthermore, that we have a knowledge of South American enterprises and must gradually acquire a knowledge of the air business in South America, and that we must avail ourselves of our knowledge of local conditions and our experience in business management in order that this whole enterprise is well managed and profitably administrated from day to day.

As Arica is going to be a landing port of the Pan American Grace Airways, Thomnen must be acquainted with the policy outlined in this letter, but I should suggest that you do not transcribe this whole letter to him, as it is confidential and only for your guidance. You ought to instruct him to give the Pan American Airways the very best service and to assist them by watching the expenses and avoiding any extravagance, and practicing the strictest economy. You ought to tell him to write to you as often as possible regarding the movement and conditions of the Pan American Airways in Arica, giving you his personal views on all subject of importance, which information you in turn, will pass on to us.

Yours very truly,

Vol. 4992 W. R. GRACE AND COMPANY Exhibit 103

Personal Letter #304

S.S. Essequibo 6 12
due Iquique 6 29

New York, June 7, 1929

F. J. Harper, Esqe.
Nitrate Agencies Ltd.,
Iquique, Chile.

Dear Harper:

PAN AMERICAN-GRACE AIRWAYS, INC.

I believe you are fully aware that the airways development at present covering Panama to Santiago, and w

will ultimately be extended to Buenos Aires, to the Pan American-Grace Airways, Inc. and that party is owned equally by W. R. Grace & Co. and Pan American Airways, Inc.

Our partners in Pan American-Grace Airways, Inc. are most reputable in the business in Peru. They are active and progressive citizens who have made sound investments and has been set up to watch the operations of American-Grace Airways, Inc. and Mr. Mann has been engaged and assigned to the Peruvian Mr. Harris in Peru and Mr. Angle, who is on our staff, as also Mr. Vogt, who will have the airport to accomplish the purpose of this business. [illegible] American-Grace Airways, Inc. in New York and that is the Pan American Airways and very close contact with the operations of the American-Grace Airways, Inc.

There is, however, a tendency [illegible] new investments and [illegible] about the speed of an airplane [illegible] what different [illegible] tion I do not mean to say that the Pan American Airways belong exactly to the category, but it is nevertheless advisable to watch all developments carefully, particularly with regard to [illegible] gets, etc. that may in future be made available to [illegible] tors.

I have just seen an interesting letter you wrote with regard to a [illegible] reference to the maestranza facilities you may offer in case of need. Suggestions of this sort are constructive and we want you to send us your frankly and quite apart from any official reports. I wish you would write me occasionally giving the [illegible] or news you may have with reference to the Airways opment.

fog is our greatest enemy in the Lima district, and, from my own knowledge of the surroundings of the city, the present field behind the Chorrillos Hills and a little distance from the sea is subject to fog and this is I fancy accentuated by the fact that planes must land from the north or north-east into the south and south-west winds. The districts to the north and east of the field are also subject to fog. The Panagra people will doubtless have looked into this whole matter, but when I was living about Lima, the place where there was most sun and least fog was the district right along the sea extending from Magdalena del Mar round to the mouth of the Rimac River. The district of what used to be known as Mar Bravo and is between La Perla and Callao is one which was never developed much agriculturally because it was so near the sea and the south-west wind and spray came across the land and made it salty and unfit for agriculture. I asked Mariano I. Prado, who owns a property called Otranto, which is near the present Country Club and runs down to the sea there, whether my opinion regarding sunshine and fogs was correct and he said that it was. He said, furthermore, that he thought land could be obtained at very low prices at various points in the region that I have indicated.

We are in this air business permanently and Lima will [fol. 4967] undoubtedly be an important terminal or stop-off point, and, before we put any more money into the present location I think we ought to have a thorough survey made of atmospheric conditions and of the available land in the district that is most naturally suitable for our purpose. In view of the fact that the wind always comes practically from one quarter I fancy that all we would need would be a long and relatively narrow strip of land running down to the sea as near as possible. When you get down to Mar Bravo the land has dropped to such an extent, that it is very little above the sea and I feel that, in developing a permanent station and headquarters, we should endeavor to locate it about there. I am merely now giving you impressions and suggesting a thorough investigation from the standpoint of them. I will take this matter up with Harris when I see him.

SANTA ELENA

The other point that I had in mind was regarding the overnight stop at Santa Elena. I take advantage of every opportunity to talk to people who have come through from the north and I get the impression that the overnight stop at Santa Elena is pretty uncomfortable. I think it is quite as important that people should have comfortable overnight stops as it is that they should have comfortable accommodations in flying. Would it not be possible to get a building at Santa Elena of a very simple character that could be cleaned and kept immaculately clean; that could be properly screened; and, the rooms of which could be furnished with very simple inexpensive but comfortable beds of a character that could also be kept sweet and clean; furthermore, in which a very simple dining room could be provided with very excellent food of a simple but a very well served character? If this were done my idea would be [fol. 4968] to get hold of some woman like Mrs. Kennedy, who is an excellent cook herself and an excellent housekeeper, to run the place really well. I think we would change the impression made upon through passengers and it would be all to the good.

I don't know much about the way over-night accommodations are provided at the various over-night stops, but I feel if we could by careful study and small expenditure make all of these comfortable and bring them up to more or less the standard of our flying service that we might add greatly to the goodwill of this enterprise.

Very truly yours,

D. S. Ingraham

we should have, on say about the first of the month, a cable summary.

I am writing you in the hope that you can assure this being regularly done.

I think the accounts should be accompanied by pretty full "remarks" which will bring into the record any unusual circumstances which will enable us to see the financial picture more clearly.

Bush and Harris ought to be able to amplify the accounts and give them very complete and satisfactory permanent form. I suppose Bush as Treasurer is closely watching all expenses and committments. We ought soon to receive pretty complete inventory of property etc. to date. We have to date no list of employees of Peruvian Airways Corporation.

Will greatly appreciate anything you can do along the lines indicated.

Faithfully yours,

RHP.Cx

[fol. 4960]

W. R. Grace and Company Exhibit 102

297

No. 611

June 8th, 1929

Confidential

Mr. G. Stimmann,
Hamburg, Germany.

Dear Stimmann:

For your private guidance I want to tell you what our position is with reference to the development of the Pan American-Grace Airways.

Our partners, the Pan American Airways, are very able and a very efficient concern which has made rapid progress but in dealing with them we find that those people are much more inclined to rapid expansion than ours is, and in order to keep working smoothly with them we have to find a way of conciliating their ideas and ours from day to day. Our theory is that this business should be developed in the same way that we have developed all of our businesses, namely, that we should make very careful estimates before we go ahead with anything; that we should work on a budget of expenditure as well as on a very carefully estimated budget of income; that we should watch every item of expenditure with the greatest care, and that we should follow a policy of the strictest conservatism that is compatible with a sound and enterprising development.

As far as your territory is concerned, we look to you to watch this business carefully and guide it along a policy of conservatism and profitable administration. We want your ideas continually and quite apart from the regular official correspondence that is carried on with your office and the head office of the Pan American Grace Airways here. We will want your personal views on all subjects of importance to guide us in generally directing the course of this enterprise.

There is a tendency on the part of most aviation developments in this country to go ahead very rapidly with extensions and in many cases to lose sight of the importance of measuring expenditure and of making the business pay from day to day. We want to avoid any tendency in this direction on the part of the Pan American Grace Airways, and we rely upon you in a fatherly way to guide and generally direct the activities in your territory on the lines of a sound businesslike policy.

[fol. 4961] Mr. MacGregor with Mr. Harris and Mr. Jacob, and Mr. Vidal assisting him, have the direct responsibility for the administration of this business, and in exercising any authority that we will want exercised, it will obviously have to be done in such a way that we do not relieve these men of the responsibility of handling this business and making a success of it. Nevertheless, we must

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[fol. 4969]

W. R. GRACE AND COMPANY EXHIBIT 106

W. R. GRACE & CO.
CALLAO

Letter No 93
(D.S.I. Trip series)

ORIGINAL PARA CORREO AEREO

COPIA VA POR CORREO ORDINARIO

On board m/v "Santa Barbara",
July 13, 1932.

H. J. Roig, Esquire,
New York.

Dear Roig,

PANAGRA

I spent some time with Harris and Vidal. I said to them, in the first place, what I feel strongly, namely that the class of men that Panagra has along the Coast, the spirit in which they are working and the service that Panagra is giving, as well as the splendid prestige that has been built up, are a great credit to the Management of this business. I feel that as far as actual operations on the Coast are concerned, the combination of Harris with our offices all along the route is building up something that has importance today and may have very great importance in the future. MacGregor deserves great credit for all of this.

RELATION BETWEEN PANAGRA AND GRACE

Harris and also Vidal, and, in fact the Panagra men all along the line are enthusiastic in their appreciation of the help and backing that they get from Grace from day to day. I think it is a credit to both Panagra and Grace that there has been built up so satisfactory and so harmonious a collaboration between them. The only point where any friction or dissatisfaction occurred, and this by the way was more

acute than I had any idea of, was in Santiago [and the cause of it was Heavey. Vidal spoke very bitterly of him and Harris [, though very moderate,] said that he felt that the change of moving Heavey from Santiago to Valparaiso and the establishing of a closer relation between the Panagra men and Metzner himself was a great improvement and that he felt that it was going to result in Panagra working as closely with Grace in Santiago as it did in Lima. With the new setup in Santiago they both feel that they will be able to [fol 4976] avail of the advice and help of Valverde and of Metzner, Simon and Kirby in the same way as they are daily availing of the help of Redshaw, Miranda, Bush and Parker. I was quite surprised and pleased to find how much Harris and Vidal lean on these men and how highly they value their assistance.

[In discussing the importance of Grace back of Panagra Harris said that he felt as I did that the difference between the results on the East Coast and the results on the West Coast was attributable at least to a very large extent to this element.]

PANAGRA MEN

I did not see all of them but I think I met all of the outstanding ones. Vidal and, I think, also Harris have singled out Shannon as the ablest man that they have. I could not get myself to agree, as, although Shannon has a clear head, I feel that he is very young and inexperienced and has the mental attitude of an aviator. In developing men for Panagra I think we must make up our minds that the pilots are very difficult to develop into administrators and still more difficult to make into businessmen. In their line they have very much the same attitude that engineers have in technical industry. Their whole training and mentality unfits them for business and it is only a great exception like Harris or like Lipscomb that learns the practical side of things. The three men that impressed me most connected with Panagra were Kirkland, who has a good deal of fineness and I think has innate quality of mind and character; Ferris, who impressed me as having possibili-

[Brackets made by hand.]

[fol. 4958]

W. R. GRACE AND COMPANY EXHIBIT 101

New York, January 3, 1929.

H. H. G. Redshaw Esq.,
W. R. Grace & Co.,
Lima, Peru.

Dear Redshaw:—

PERUVIAN AIRWAYS CORPORATION

We have not been receiving anywhere near as much information, either general or in the form of financial accounts and statements of operating expenses and results as we should have to follow the developments of the air transport enterprise intelligently.

The accounts as of October 31st came forward in pretty good shape but those of December 1st were quite inadequate which prompted us to cable as indicated by the attached letter to Harris. In reply to this cable we got only a statement of operating revenue but nothing on expenses so we had to cable again yesterday for the expenses.

The reason that Mr. Bush was made Treasurer of Peruvian Airways Corporation was to insure a close check on all financial operations and the Directors of both Peruvian Airways Corporation and Grace expect to have just as much information about Peruvian Airways Corporation operations as Grace gets about Cartavio or any of its own enterprises on the Coast. In fact it is necessary to have even more information as this is a new venture with the technique of which we are not familiar. Mr. Trippe, President of the Peruvian Airways has written Mr. Harris (or at least said he was going to write him) suggesting that Harris every Saturday write him a very comprehensive letter telling him everything that happened during the preceding week and everything that is in his mind regarding the future of the enterprise.

[fol. 4959] The financial accounts ought to come forward on the first mail steamer after the first of the month and

unjust compensation of their representatives in Chile, but that Panagra, which depends so much for its life on its general prestige and the goodwill of the public, is in a particularly delicate situation in this respect.

The other way in which I feel Panagra could use its currency in Chile is by buying gasoline in currency. The West India Oil Co. is selling gasoline generally throughout Chile in pesos and at a price which figured at the real rate of exchange is lower than the price Panagra is paying in gold. I mean by this that Panagra would be delighted to convert their present holding of 250,000 pesos at 30 to the dollar, and, if you figure 30 to the dollar then gasoline is being sold to chauffeurs in Santiago in currency at a cheaper price than Panagra is buying it. This situation should be remedied and I have an idea that with very tactful handling it might be remedied. Panagra has a contract running till the end of the year. I don't know who has the contract or whether it buys through the Grace office or what Grace's interest in it may be, but I feel that under today's conditions Panagra is suffering in the way that I have in-
[fol. 4974] dicated; furthermore they are held up in the development of their traffic until they get into a position where they can disburse currency in the same way that they have to take currency. This matter requires pretty prompt attention.

BOLIVIAN TRAFFIC

We have discussed at various times the idea of running a shuttle route from La Paz to Arica. The Germans put this in and have temporarily abandoned it. On studying the map and looking over the whole position I decided to suggest to Harris that we should run our regular international route from Lima to Arequipa, from Arequipa to La Paz, La Paz to Oruro, Oruro to Antofagasta. I figure that it means an increase of about 180 miles, but I think that the route would go over two important cities and go past Chuquicamata for a possible stop and would tap the two most important centers of a new country pre-empting that territory and giving us a very important new source of revenue. The increased distance is so small and we have so

much slack in the Antofagasta Santiago leg that we could probably arrange to make the night stop in Oruro instead of Antofagasta and then fly through from Oruro to Santiago the same day. I am not sure that you know that there are very important Chilean interests located in Bolivia and there is a steady movement of passengers from Santiago to Bolivia through Antofagasta. Furthermore, there is a fairly big movement of passengers from La Paz to Arequipa and to Lima. This movement today is not large but under normal conditions it is quite a big movement and one that ought to fill up our planes from Lima to La Paz and from La Paz and Oruro to Santiago. I submitted this suggestion to Harris, who says that the plan is entirely [fol. 4975] practicable and that he is in favor of it. He will doubtless be writing to Mr. MacGregor about it giving his views fully. I have no right to any opinion as to the feasibility of this program from a practical flying standpoint but from a commercial viewpoint it would, I think, add something quite important to our enterprise. It would make, I believe, very profitable all of the range from Arequipa to Santiago, which at present is very thin.

[Handwritten notation—I am not sure this is true but that is the spirit.]

CABOTAJE

Regardless of all of Love's protestations I feel, and I think that Harris feels, that he and the United Aircraft have put the Peruvian Government into the aviation business. Harris says that he has felt in the last few weeks a distinct change of attitude on the part of the Government and he has just been served with a notice that Panagra will not be allowed any cabotaje privileges at the end of their present 5-year concession. This means that Peru is going the way that Chile has gone and that we have a very definite and serious problem in Peru as we have in Chile.

I feel that the course to take is to study carefully the means of going into the cabotaje business with a national company in each country using our reserve planes that have been completely amortized for this purpose and registering them locally. My idea is that we cannot build up this

The other thing that I have in mind c
erence to equipment for the Northern ru
Douglas people whether they could build
same general design as their present ampl
a more ample cabin and with three Was
Cyclone motors. Harris says that the Dou
very competent and very nice people to d
think it would be worth while getting the
idea. The reason that I like the Douglas
that the motors are well away from the
fuselage is really in the form of a boat a
like a good deal more sensible equipment tha
This again is a taxman's view and may be
neous. I put the suggestion forward merel
sideration.

[fol. 4979] The maintenance of the Sikorsk
per mile whereas the maintenance of the
only 12c keeping in mind that one has two
other has three.

HARRIS

I feel that he is doing a great job. I thi
for New York to keep me very close touch
think that as a matter of general policy
arranged that Mr. MacGregor would go dow
every year and Harris would come to N
a year, that it would keep the whole outf
with the maximum smoothness and efficien
if you think well of it I think you might
with Mr. MacGregor.

Very truly yours,

D. S

doing with ref
rm is to ask the
d a plane of the
pibian but with
asp motors or 3
ugias people are
deal with and I
been busy on this
tas equipment is
e water and the
and looks to me
han the Sikorsky.
ie entirely erro-
is for your con-

sky is costing 13c
Ford is costing
engines and the

bank is important
with him and I
if it could be
down to the Coast
New York once
enterprise running
ney. Therefore,
talk this over

S. DEHART

business with high-priced planes and with high-priced pilots and mechanics, and that we would have to use either European pilots that we could contract at about one-third of the [fol. 4976] cost of American pilots, or preferably use men of the country whom I think we can find and train to be excellent pilots and mechanics. This latter point I have discussed fully with Harris and he says definitely that he is developing men both as mechanics and also as competent pilots who could man the planes of a national company in a way that would reflect credit on our service. The matter of the ownership of the national company and of its privileges is a legal matter that requires a lot of study. I have asked Harris and Vidal to take this up at once with Moreyr and García Gastañeta in Peru and have asked them to write to Valverde in Chile to see whether we couldn't revamp the Cia. Porteña de Vapores adding "y Aviacion" to the name and making any necessary changes in the by-laws. I think that we will have to bide our time and choose our opportunity with a good deal of circumspection but I think it may be quite a practical thing to get a national company operating national planes in the cabotaje business in each of the countries, and furthermore that we might work out a program under which these companies would serve practically as reserves, at least as far as planes are concerned, for handling our international service.

You have given this whole matter a great deal of thought and I have unfortunately been able to give it little time, but from my cursory view of the situation in the two countries I get a rather definite impression as to what we should endeavor to do and this I pass along to you for what it may be worth. You will understand that what I am driving at is to quietly put ourselves in both countries into a position where the Army and the Navy of the country cannot drive us out of the cabotaje business.

[fol. 4977] In Ecuador the only idea that I have in mind is that as Mann is considering having the steamship service make its call at La Libertad and as we seem to have difficulty in making the flight up to Guayaquil, we might run a shuttle service from La Libertad to Guayaquil and have a very comfortable place to handle passengers in

La Libertad, and then fly there back and forth to our planes and to our steamers, making the flight in about an hour and making it just as comfortable trip to make the connection. In this way we could speed up our international service of both steamers and planes, and, if we could get passengers to fly freely, it might be a happy solution for both of our services. I talk it over with Harris; in fact, the suggestion came out of our discussion and I think came from him. Please talk this over fully with Mann, as, whereas I feel that a call at La Libertad under present conditions is not going to retard the Guayaquil and Quito trade, it is possible that an airplane shuttle service may do so if it were very ably handled.

NEW EQUIPMENT

The Sikorsky equipment is the neck of our bottle. There is no doubt about that. Harris is the man on whose judgment I think we should rely as to as practical flying problems and equipment are concerned in the field. He is satisfied that a tri-motor Ford on floats is the unit that we need for the Northern run. Therefore, I would be inclined to back his judgment and to get a set of floats for one of the Ford planes, provided this can be done for a reasonable figure. Harris says that they want $18,000, plus $2,000, for supplying these floats. When I asked him why [fol. 4978] they wanted such a ridiculous sum, he said that that was the way the airplane manufacturers were and that they were extortionate in their charges whenever they got an opportunity for being so. Is there not some way in which we could put all these manufacturers into active competition on purchases of this sort. Can we not get an outstanding designing engineering company, like Gibbs in steamers, to draw a design and specification for floats for a Ford, or can we not get the exact design and specification for the pontoons that are being used on Fords in Canada or wherever they are being used successfully and cannot we pass those designs and specifications out for active competitive bidding. It cannot cost $18,000, or half of that to build these pontoons today. This is a buyer's market. Let's get busy!

I feel there is for you in developing this field alone, quite apart from the matter of passengers, about as big an opportunity as we have in anything anywhere.

Very truly yours,

P.S. Yesterday in talking to the head of the West India Oil Co. he said that they had voluminous reports that they wanted to get to New York quickly but on which the airmail cost was too high and he was working on the idea of sending them by air express.

[fol. 4984]

W. R. GRACE AND COMPANY EXHIBIT 169

[Handwritten notation: Auth. 5 17 36 Answered 5 21 36]

W. R. GRACE & CO.
NEW YORK

No. 46
(D.S.E. Trip Series)

New York, May 11th, 1936.

Dear Mr. Aglehart:

PANAGRA TRAFFIC

The clerks in the Fifth Avenue office have been instructed in the selling of airway tickets and a memorandum of instructions is being prepared which can be supplied to other Grace offices. The combined air and steamer tours detailed in the folder gotten up for the benefit of Cook's are being pushed harder.

Photographic enlargements of Panagra planes in flight and scenes en route have been made for the Fifth Avenue office and after display there will be passed on to Cook's who have indicated a desire to use them.

We will arrange some publicity when the new Sikorsky is taken over, probably late this week. Harris is at Bridgeport today and we are arranging for suitable photographs

when the plane is delivered. Enlargements of these photographs will be displayed in the Fifth Avenue office.

I am trying to bring about some joint reference to Panagra connections in the Grace advertising but Mann has been so occupied with the strike that we have not had a chance to get down to details of this.

Roig wrote you last week about the status of the new schedules which is still undetermined.

Air Express—Traffic figures show that only a small part of the total air express handled by Panagra in 1955 originated in the United States, 11.5% the rest out of a total of 155,939 lbs. This can and must be built up. George Smith, formerly at the Canal Zone, who has recently completed a trip over the line in the interest of stimulating express traffic is due here on the "Export" May 19th. I will take [fol. 4985] advantage of what he has learned to perfect a plan for a more effective solicitation of air express traffic from here. Am personally contacting some of the big stores, jewelry houses, pharmaceutical companies and other manufacturers of high cost products who are logical patrons of air express. I think a personal visit by Smith will help when he gets here.

I will write you in greater detail as results develop.

Hoping you are keeping well and having a good trip, I am,

Faithfully yours,

R. H. PATCHIN

D. Stewart Iglehart Esq.
Lima, Peru.

Copy to Antofagasta.

ties; and, Thommen, who is a well trained businessman and one who, though limited in his scope at present, might conceivably spread his wings if he got an opportunity. I am not sure about this latter, however, as Europeans of his type are often definitely and permanently limited. I have no reason to believe that he is and I would like to give him a chance at handling a job like Shannon has in Santiago.

[fol. 4971]

EXCHANGE

This has been troubling Vidal and Harris. They have piled up 250,000 pesos in Chile and the answer to the question in your No 15 as to why the Transandine movement is falling off is that they can't take payment for passages freely in Chilean currency. This is a route where there is a movement of passengers back and forth and in which I think is similar in its character to the cabotaje movement, and I feel it is rather futile to try to build it up on the basis of gold passages except in the case of foreigners who are travelling through Chile on an international route.

When Harris put up this Chilean exchange problem to me I answered that as far as the Chilean movement is concerned he ought to put the business of that unit on a basis in which his currency disbursements would offset his currency income. I explained to him that at least in Chile it was not only illogical but entirely unjust and was furthermore unwise to pay his head men, not only in gold, but to actually give them the American dollars which they are bootlegging about the market contrary to the spirit of Chilean Government regulations and in a way that prejudices Americans in Chile and prejudices Panagra. At a time when there was a definite and more or less permanent relation between the monies of different countries it was quite excusable to pay a man in one country in the money of another, but this relationship has been entirely abandoned in practice;

[fol. 4972]

in fact to such an extent that no one knows today in Chile what a dollar is really worth. Furthermore, men who are getting dollars in Chile and who are spending pesos can live comfortably on 20% or 30% of their income. We have the position of a mechanic getting $250. which he bootlegs at 40, meaning that he gets 10,000 pesos a month

and a mechanic working alongside of him at the bench who, though a first class man, is amply paid at 1,000 pesos. I think we only have one such mechanic in Chile but even one creates a situation which is simply ridiculous and which if continued, would undermine seriously the morale of (Panagra's)
our own organization. Panagra are paying, I believe, $4,000 a month in gold salaries to nine men in Chile. The least that they could do would be to pay those men in currency at the legal rate of 16.50. This would be the just thing to do and would enable Panagra to take 60,000 pesos more currency in for Transandine passengers. Even Cosach which has been the most extravagant spender in Chile has recently adopted the plan of paying only a certain percentage of salaries in gold and are paying the remainder in currency at the official rate. [Before I arrived, Vidal had already put forward the suggestion of paying a third or a half of the gold salaries in Chile at the official rate, and, as he told me that Harris had refused to accept this idea, I had to handle the conversation carefully with Harris to avoid his thinking that Vidal had put me up to it.] I believe[,] however,[] that I was able to put the whole idea
(Harris)
forward in a new way to him and I believe that if he is
might
instructed to adopt a basis such as I have suggested, he will do it quite willingly. I would suggest taking this up with him if necessary by cable at once.

In this whole connection I want to make clear to you that [fol. 4973] there is quite a bit of feeling in Santiago and throughout Chile against large American interests who continue to compensate their men in Chile by paying them dollars. They are, on the one hand, spending money lavishly,
who are
and, on the other hand, they are the men making the market of the "Bolsa Negra" which has been one of the most powerful influences in debasing the Chilean peso. Anything which creates anti-American feeling today is a serious matter and I think not only should all American enterprises appreciate the prejudice that is coming to American concerns generally through the extravagant and

C
O
P
Y

La Panagra esta trabajando admirablemente bien. Es una organizacion admirable y sus hombres todos son unos ases muy competentes. Los viajes los esta efectuando Jardine Hawkins, quien vino acompañandolo volo Domingo y Lunes, regresando el Martes por tren a Arequipa. Es un sueño lo que esto sera. Estan haciendo hasta cinco viajes al dia con maquinaria del Cuzco a nuestro campo. Gente muy simpatica y muy correcta. Pensar que con mulos solo puede transportarse piezas de trescientas libras y que tardan hasta 30 dias! Estos transportan 1500 libras cinco veces al dia! Un viaje lo han hecho hasta en 21 minutos. Figurate que durante el vuelo cada 15 minutos se comunican con su estacion de Lima. Todo se hace con una precision matematica, no pierden ni un minuto. Llegan con la carga y tan pronto como quedan suspendida con la grua, inmediatamente parten. Yo creo que esto tendra una enorme trascendencia en el pais y resolvera muchos problemas. Ellos estan haciendo un record mundial. Ya que, si bien es cierto en Africa se ha trasportado maquinaria pesada en esta forma, eso ha sido a nivel del mar y aqui estamos a 9000 pies. Probablemente el dia 30 terminaran y seran trasladados a Lima.

[Vol. 4983]

W. R. GRACE AND COMPANY EXHIBIT 108

Letter No. 25
(Trip series)

Santiago, May 24, 1936

R. H. Patchin, Esquire,
New York.

Dear Patchin,

I have your letters Nos. 45 and 46.

PRESS INTERVIEW—CHILE

I am very much obliged to you for the suggestion of a Chilean interview. I am adding to it somewhat so as to touch upon one or two other points.

PANAGRA TRAFFIC

As I go along I get more and more enthusiastic about the prospects of building up traffic for Panagra and especially the possibilities of getting that and the steamer traffic solicitation and schedules combined and dovetailed in a way that will give a great push to Panagra movement and at the same time bring color and benefit to the Grace Line picture. I know how hard you will be working on this and I will be very interested in hearing continually from you as to the progress that is being made.

AIR EXPRESS

There is an almost unlimited field, I think, for developing this business for movement originating in the United States. The other day, I was in Guayaquil and was talking to Clark Stop, who is in charge of the Pennsylvania Power Plant and he happened to mention that he needed a small spring for one of his delicate instruments and that it was sent out by airmail and arrived so quickly and in splendid condition; and, he mentioned that this was a wonderful facility that was not generally appreciated or taken advantage of

[fol. 4986]

W. R. GRACE AND COMPANY EXHIBIT 110

Letter No. 50
(D.S.I.—Trip Series)

New York, May 14th, 1936.

D. S. Iglehart Esq.,
Santiago, Chile.

Dear Mr. Iglehart:—

AIR EXPRESS

Herewith copy of a letter sent, after consultation with Roig, to all Grace managers re the importance of building up air express traffic.

I find that Harris and Vidal are distinctly of the opinion that the Grace passenger solicitation on the Coast is consuming practically all of the time of the men assigned to it and that express is secondary.

I learn that the domestic lines are making a big drive this year to build up express revenue and some of them are even inclined to sacrifice passenger capacity for this purpose.

We are tabulating from Panair records (Panagra has none) the shippers and consignees of all express that moved during the last year to or from points on Panagra route and they will all be solicited actively.

However, in view of the fact that the outward express movement from the United States will always be larger and that commercial shipments are seldom routed by air express unless the consignee so directs, it seems very important that consignees on the West Coast be very actively worked on and by men of sufficient maturity and judgment to be persuasive.

The decline in Santiago Montevideo express revenue is said to be due largely to the reduction in the lobster traffic and if so, would pretty nearly account for the total reduction of the entire system but you will observe that every division of Panair showed a substantial increase.

[fol. 4987] I think it possible to get some air express from Europe via New York for points on the West Coast. Occasionally express shipments come from the West Coast for transshipment to Europe from here. In fact one shipper in Guayaquil has threatened suit because he claims to have been erroneously advised that an express shipment would connect with a certain steamer here.

I am giving attention to the possibility of routing express shipments to Cristobal by steamer, then by air, but have not gotten very far with it yet.

Sincerely yours,

Encl (2)

P.S. Since dictating the above I have read your No. 5 of April 28th to Roig and will endeavor to carry out all of the suggestions therein made. I have also noted your letter No. 12 to Roig.

[fol. 4988]

W. R. Grace and Company Exhibit 111

[Handwritten notation—Lima 6-3-36]

W. R. GRACE & CO.
NEW YORK

Letter No. 61
(D. S. I.—Trip Series)

New York, May 27th, 1936.

D. S. Iglehart Esq.
Lima, Peru.

Dear Mr. Iglehart:—

AIR EXPRESS

Daulton is quite thoroughly aboard on the idea of developing steamer-air express and is willing to undertake its solicitation on a comprehensive scale. He thinks we ought to work up joint steamer air express schedules and publish a tariff. This has the advantage of utilizing the regular solicitation connections of Grace Line such as freight forwarders, railroads and express companies.

Mr. George Smith, the Panagra man now working here on air express is fully aware of the possibilities of this steamer air tie-up but a little apprehensive of the possible attitude of Panair. However, Panair can have no sound reason for objecting to any traffic that a steamship company may originate and deliver to Panagra as an on-carrier. As a matter of fact such solicitation by Grace Line will probably produce traffic to be sent on to Central American and Colombian points by Panair, and in time they will probably recognize that it is a valuable connection for them as well as Panagra.

Daulton will put a first class young man on this job and I will continue to give it all possible attention.

The Sikorsky S-43 came to Newark yesterday and we all took a flight finding the ship handsome, comfortable and easily handled. The ventilating system was a little at fault but is now being corrected. The interior seems much roomier than the Douglas and I think the effect on travel should be very good indeed. We had photographs taken for publicity purposes. Two are enclosed.

Very truly yours,

/s/ R. H. Patchin

[fol. 4989]

W. R. Grace and Company Exhibit 112

= 345

LETTER NO. 34
(H.J.R. Panagra Series)

September 15, 1936

Andrew R. Shea, Esq.
Lima, Peru

Dear Shea:

We enclose a report from G. P. Smith to J. M. Van Law, dated September 3rd, relating to the development of air-express. This is handed to us by Panagra here in response to our inquiry as to the results of Mr. Smith's work since being transferred to Lima.

You will recall our letter #16 of May 14th, in which attention was called to the fact that airexpress traffic is declining and the need for solicitation by Grace as *Traffic Agents for Panagra*. At that time you advised us that steps were being taken to provide the direct solicitation which is necessary to produce results in this new field to which we attach great importance. The Pan American system as a whole has steadily increased express revenue, but on Panagra it seems to be standing still.

Mr. Smith's report gives the impression that little or nothing has been done until now. You will note that he stresses the necessity of close solicitation, advertising and specialized sales effort. His report is a rather extensive resume of the obvious steps necessary to develop this class of business, but what surprises us is the suggestion throughout that all of this is now to be undertaken for the first time. The report indicates Mr. Smith or that Panagra itself must undertake all of this plan, whereas, it has always seemed to us that Grace, as Traffic Agent for Panagra ought to be doing all of the obvious things and covering the ground thoroughly in order to increase express revenue for Panagra and also justify the Panagra payments for service. Please note this connection to Paragraph #4 on Page 4:

> "An attempt to make the agents take more interest in selling expres , possibly through commission payments or otherwise."

When Mr. Smith was here he dwelt on the fact that consignees on the Western Coast ought to be solicitated, but that some Grace Agents were not very keen about this because they received no commission on inbound business. I think he made this point more particularly about Buenaventura. Inasmuch as all Grace Houses are compensated for their services to Panagra, it seems pretty far fetched for anyone, no matter how far down the line, to be entertaining the idea that solicitation of consignees is gratuitous service.

Of course, it is not unusual for a new "broom" like Smith to get the idea that nothing has happened before

his advent, but it is hard for us to believe the situation is so barren of previous effort as this report implies. We suspect such is by no means the case. Even if the report errs in this respect, we do not deem it worth while to [fol. 4990] make any issue over it with Panagra. On the other hand it would be unfortunate all around if the Grace efforts in behalf of airexpress was so negative as to give any excuse for such a report. The Grace Organization is supposed to know more about traffic and have more ways of getting it on the West Coast than any Panagra man, but this ought not to be a matter of supposition, it ought to stand out as a fact so plain that nobody could write such a report.

Yours very truly,

AIRMAIL

ENC:

[fol. 4991]

W. R. Grace and Company Exhibit 113

Letter No. 7 = 46

New York, March 18, 1930

D. S. Iglehart, Esq.
Del Ray, Florida

Dear Mr. Iglehart:

AVIATION

I, of course, entirely agree with the last paragraph of your letter of March 13th that whatever we may ultimately decide, the best trading position is to not show any interest in selling and that is precisely the course we have been following. In fact this necessitated at least one rather sharp exchange some weeks ago as the only way of getting Trippe off the subject. The purpose of my No. 2, however, was to ventilate the idea among ourselves in case a favorable opportunity to bring the matter to a head with Trippe should present. As you are getting the private cables, you will have noticed cables exchanged with Valverde and

Garni on this subject. As matters stand I will, of course, continue to give no encouragement whatever to the idea of our selling out.

Meanwhile, I am pressing Trippe to get in writing his proposed modifications to our management program. After promising this for over a week he yesterday called up and wanted to go ahead without putting anything in writing which I objected to on the ground that it would simply lead to further misunderstanding. Of course, what he really has [fol. 4992] in mind is, having stalled on getting rid of MacGregor for two months after it was decided upon, he now wants to get rid of him and leave Pan American Grace without any organization and dump the whole thing into Pan American without any clear understanding of the basis. I do not feel that this suits us at all. In any case, however, there is no doubt that the matter will still be in a formative stage when you return and that it will not be necessary to take any final decision regarding the management plan until I have an opportunity to go over it all with you.

I have, of course, not seen the figures on which Trippe's profit is calculated. I take it for granted, however, that his profit is without figuring any interest on his capital but after his usual depreciation reserves which are liberal.

My trouble in this whole picture comes about not because I "find it difficult to deal with Trippe" personally. I have not dealt with the nitrate importers for some years without becoming absolutely callous so far as dealing with difficult personalities is concerned. What does trouble me, however, is the responsibility for a business where it is so well nigh impossible to come to definite understandings and to have these understandings carried out. In this particular business the responsibility is particularly heavy because of my constant fear of some accident on the line. That this fear is not without some foundation you may [fol. 4993] gather from the following:

1. Rihl, Vice-President of Pan American, who is just returning from South America has made some very unfavorable reports regarding our operations. He declined to fly on the line although he did cross the

Andes after insisting that the motors on the plane be changed. We may, of course, assume that his views are not entirely disinterested.

2. Mr. Love, President of United Aircraft, while in Peru recently chartered one of our planes for a flight. He found the plane in what he, at any rate, considered such an unsatisfactory condition that he declined to fly in it and has made some rather uncomplimentary statements since his return to New York.

3. The condition of our Loening as evidenced by report enclosed herewith seems to me to indicate that maintenance is not what it should be. We are shipping this plane back to the United States for a complete overhaul. The plane was grounded by the Canal authorities making it impossible to fly it without this overhaul and there are no available facilities at the Canal for this work.

4. The enclosed report on recent relicensing of one of our Fairchilds in Chile gives me much concern. This plane was shipped to Chile about a year ago, was in warehouse there until July 1st last and had flown only about 250 hours at the time of this inspection.

5. The enclosed cross correspondence between Harris and Rihl, particularly the second paragraph on page two of Harris' letter does not appeal to me. Incidentally, we have cabled Harris with regard to this paragraph as per copy enclosed.

As a matter of information, you may be interested to know that we have finally, after a good deal of investigation, purchased a Curtiss Kingbird for service over the Andes. This is a two motor plane which upon test attained [fol. 4994] a ceiling of 25,525 feet. With extra motor and spares the cost comes to about $30,000. Harris and our own people in Chile felt strongly that the Ford with a maximum ceiling of 20,000 feet was not satisfactory for this service and it is in any event a pretty expensive ship to run with-

out passenger revenue. The Kingbird should not only serve the immediate purpose in the Andes but, being a land motor ship, would be available for international passenger business in Chile at any time. We considered very carefully a Lockheed for the Andes which had an original cost of about $7,000 less and some other advantages but these we decided were outweighed by the fact that it was a single motor plane, lands at a very high speed and is so designed that repairs are costly. Perhaps the controlling factor against it was the fact that underwriters would not insure it in this run except at a very excessive premium and it was not even certain that we would get insurance on that basis.

Very truly yours,

[fol. 4995]

W. R. Grace and Company, Exhibit 114

= 555

No. 70
(A46 Trip Series)

(Letterhead of W. R. Grace & Co., New York)

On Board M. S. "Santa Clara",
March 15, 1934.

[Handwritten notation: 3-19-34]
Harold J. Roig, Esq.,
NEW YORK.

Dear Roig:

PANAGRA

With the change in schedule, together with the Chilean cabotaje and the Peruvian airport question, Panagra really have more problems than I imagined.

I have maintained as much of a contact with MacGregor and Harris as I could in what they of necessity must consider an unofficial capacity, and in general found MacGregor quite receptive to anything I said. I am convinced now that something has to be done and done very promptly with

prospects of earning small commissions for your office on steamer passages, etc.

I do not doubt you will appreciate Mr. Garni's recommendations and be guided by them.

Yours very truly,

(Signed) J. E. ZALLES

[fol. 5004]

W. R. GRACE AND COMPANY EXHIBIT 116

No. 10392

Airmail 11/4
Due 11 -

November 4th, 1933.

Mr. F. J. Harper,
Grace & Co. C. A.,
Cali, Colombia.

Dear Harper:

PANAGRA AGENCY COMPENSATION.

For your private information I attach copy of letter 462 to Mr. Valverde and letter 10629 to Mr. Redshaw, written by Mr. Garni. Please give definite instructions to Cormarco in the sense indicated by Mr. Garni and impress upon them the necessity of giving Panagra first class service and following strictly the recommendations made by Mr. Garni in the attached correspondence.

Yours very truly,

(Signed) J. E. ZALLES

[fol. 5005]

W. R. Grace & Co. Exhibit 117

La Paz, December 4th, 1900

J. E. Zalles Esq.
New York.

Dear Mr. Zalles:

PANAGRA

With reference to my letter No. 1881 of September 17th, I regret very much that up to the present I have not yet received a reply on this subject, namely the agency commission for the Arica Agencies Co.

The Arica Agencies Company have already spent more than Sch 5,000.— in favour of the Panagra, which sum they expected to cover with the agency commission which would be asigned them by the Panagra. In this account we have not included the salary of the employee who is spending most of his time in the reception and dispatch of the ships.

However, in spite of repeated complaints we have not even received a reply from the Panagra on this subject.

I consider it very unfair on behalf of the Panagra to leave this matter in abevance for such a long time. We have had a lot of extra work in acting as agents for the Panagra and for which the Arica Agencies Company has not received the slightest remuneration up to the present. If we are to continue this service without remuneration in the general interest of the firm, I expect that at least the Panagra will reimburse our actual expenses.

I should like to have this matter settled by the end of the year in order not to delay the closing of the annual balance of the Arica Agencies Company, and I would thank you if you would kindly take this matter up again to deal with the Panagra, asking them for a final decision after the

and daylight was only just beginning to break through the dark when we took off.

According to Holguin, somebody seems to have spent about a million sucres in preparing the Guayaquil airport. Just how they spent this sum I do not know, as outside of what looks almost like a shack, in which I presume they store gasoline, etc., there is nothing except a piece of land I surmise, however, that the bulk of whatever money has been spent went towards draining the land, for as you know, all those sections are practically swamps and I imagine that it would be extremely difficult to locate any land anywhere near Guayaquil other than swamps at least it appears so when you fly over that section.

If, as is probable, we will make the new schedule alright on land and take off from land, I see no solution other than an arrangement with the Government under which we can use the above referred to airport. I understand there is [illegible] 4920 a suitable runway now of only 1,000 meters at least. Holguin gave me these figures, and it is my impression that additional money will have to be spent to make that ground suitable for an airport.

I have, of course, not had very much time to go into details but my offhand impression is that we ought to find out how much is to be spent to make the airport entirely suitable for our purpose and then approach the Ecuadorian Government, perhaps on the basis of our finishing the airport, and then deducting the corresponding advance from the rental we would have to pay and which would have to be at relatively small sum, perhaps something like 500 to 1,000 sucres per month.

I appreciate that the foregoing information adds nothing to what you already know. Somebody will have to go into this whole situation specifically and thoroughly before anyone can formulate a definite opinion as to what has to be done and how the matter should be approached. Any negotiations of this character with any [illegible]

Buenaventura, we had to drop down at La Perla, one of [fol. 5001] the first islands south of Panama, to take on a supply.

The more I think of this northern division, the more I become convinced that while we develop whatever our new and fast seaplane will be, we should immediately order at least one set of floats to let Harris try Fords on ~~the~~ *floats* ~~Lima~~. The Fords are such comfortable planes and so extremely steady that I just cannot get it through my head why we should not use at least as a temporary measure, the Fords which will be available when the Douglas planes come out. In this connection you will recall that Harris is very definite that Fords on floats will from a technical standpoint be a practical solution. Without any reference to our conversations with Harris on this subject, I asked Kirkland in an offhand way what he thought about Fords on floats for the Northern run, and he stated in a most unequivocal manner that in his opinion they would be entirely safe in the kind of water we have to land in.

Personnel: The more I see of Panagra's personnel up and down the Coast, the more I am impressed. Every one of your pilots, without exception, seems extremely capable and practically all of them have a very pleasing personality. The pilot who brought us up from Talara (unfortunately I have forgotten his name) is an extremely nice fellow, who not only seemed to handle his plane quite ably but went out of his way to please the passengers. Even at Guayaquil he looked after all details and posted the inexperienced travellers as to conditions in Guayaquil. I think such a condition stands greatly to the credit of those who select the personnel.

[fol. 5002] *Weather*: From Lima to Panama we encountered all kinds of weather. Heavy fogs at Paramonga, where Pilot Moore made a most beautiful landing; we encountered heavy rains and again heavy fogs from Guayaquil north, and it is really admirable how the pilots handle their equipment. All in all we had a very nice trip but the Sikorsky trip practically ruined my limbs. I had such pains in my side this morning that if I had not had my appendix

out recently I would have sworn that I
of appendicitis. However, after I ate
few hours the pains disappeared and
on being cramped in that Sikorsky toy

General: As far as I can see, you
out for several weeks to come, as th
portant problems such as the Lanca
the Chilean cabotaje rights, you hav
and Guayaquil airport problems, both
solved too in the near future. Then
the question of deciding about the Fok
think you should not only approve but
the idea of making at least a trial.

Very truly yours,

[Fol. 5003]

W. R. Grace and Company

No. 10380

Mr. Manuel Holguin,
Guayaquil Agencies Co.,
Guayaquil, Ecuador.

Dear Holguin:

PANAGRA AGENCY COMPA

For your private information I attach
to Mr. Valverde and letter #10629 to
written by Mr. Garni and I am sure
phasize to you that it is in the inte
Organization to give first class servic
demonstrate to them that the Guaya

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MATTHEW BENDER & COMPANY MB -63

m microcard

1222

I should recommend you to tell your man in Arica not to let up in any way on the efficiency of the service as if he does both he and you will get into serious trouble. The service, by the way, has not proved quite perfect recently as in one case Arica forgot to tell the plane that they should stop at Cañete to pick up a passenger, and this week we have had to inquire about a mail bag for Buenos Aires which failed to go through and was eventually found in Arica. It is a very serious thing for foreign mail not to go right through and Mr. Harris is awaiting for an explanation from Arica to send up to New York.

I know you will take the advice given in this letter in the spirit that it is meant. I do not want to butt in on your affairs but I really do think you should not let your Arica people do anything but give 100% efficient service to Panagra, for Arica is a very important link and I have not a doubt good service rendered will be taken into account.

Yours truly,

(Initials Illegible)

[fol. 3669]

W. R. Grace and Company Exhibit 126

Handwritten notation Mr. H[illegible] Mr. [illegible]
Mr. Campbell, Mr. [illegible]

[illegible] & Co. (Grace) S.A.
Sanitas

Letter No. 26
CHR/ltp/ortiz

ORIGINAL AIR MAIL LETTER

[illegible] Sanitas, April 9, 1965

Stamp: RECEIVED

A. Gattis, Esquire,
New York.

Dear Gattis,

RELATIVE SERVICES RENDERED BY GRACE AND PANAM

In view of Trippe's conversation about arbitration [illegible] talks referred to in your No. 2, I have had another talk with MacGregor about the relative services rendered by the two partners. He assures me most emphatically that in the event of arbitration he would have no alternative but to state the truth as he sees it and that this would be that the views rendered by the Grace organization were in no way in excess of those rendered by Pan American. He says that Grace have carried out their obligations and [illegible] cooperation of their whole organization in the way in which were contemplated in the original

[fol. 50006]

W. R. GRACE AND COMPANY EXHIBIT 118

=64=

COPY

No. 14

La Paz, December 5th, 1930.

W. R. Grace & Co.
La Paz.

P. L. Thommen Esq.,
C/o Pan American Grace Airways Inc.,
LIMA.

Dear Thommen,

PANAGRA AGENCY COMMISSION FOR ARICA

Attached please find copy of my airmail letter No. 15020 to Mr. Zalles treating on the agency commission for the Arica Agencies Company for work rendered in connection with the Panagra. The contents of this letter are self-explanatory.

It is really too unfair that this matter has been pending so long and that the Panagra do not take the slightest notice of my repeated letters to New York.

I would ask you to take this matter up with Mr. Harris and explain to him the expenses the Arica Agencies Co. have had for account of the Panagra, hoping to cover this sum by the corresponding agency commission. Most of the money was disbursed during your time in Arica and I therefore ask you to explain the position to Mr. Harris. Should the Panagra consider the work the Arica Agencies do for them at Arica simply as an honour then I am afraid that my opinion differs from theirs. I am giving Arica instructions not to spend any more a single cent in the future on the Panagra until this matter has been favourably settled.

Awaiting your news, I remain,

Very truly yours,

GS OB
Encl.

G. Stimmann

[fol. 5007]

W. R. GRACE AND COMPANY EXHIBIT 119

=69

LIMA, Dec. 27th, 1930.

G. Stimmann, Esq.,
LA PAZ.

Dear Stimmann:

PANAGRA AGENCY AT ARICA

I have seen your letter No. 14 to Thommen together with copy of your No. 15020 to Mr. Zalles. I quite understand that you are greatly upset at not having any agency commission to cover your out of pocket expenses and also services given to handle the Panagra business, but the fault is not with Mr. Harris who is very desirous of getting the commission question fixed up for all offices. It is not a question of Panagra's considering the work done at Arica as simply an honor, but that the controllers of the business, who are, of course, our people in New York and the Panair people, have for some reason or other not yet taken a definite decision. I spoke about this to Mr. Roig as he went through the other day and I think that you will very soon receive news from Mr. Zalles that an arrangement has been made. Meanwhile as regards remuneration I suppose you are leaving the out-of-pocket expenses in your "cetas, por liquidar", and you need not doubt that later on this will be paid to you plus something for employee's salary, services, etc.

I see that you have told Arica not to spend a single cent in the future until the matter has been favorably settled, and I think that you must be looking for trouble as W. R. Grace & Co. has a lot of money in the Panagra and it must be considered a part of your job to do all we can to keep up a good Panagra service even if at the moment it does [fol. 5008] not look as if we were getting much out of it.

It seems to me that Trippe's talk of arbitration is pretty much sheer bluff.

Very truly yours,

(Sgd.) HAROLD J. ROG

[fol. 5610]

W. R. GRACE AND COMPANY EXHIBIT 121

[Handwritten notation — Mr. Holloway \ Mr. Cogswell \ Mr. Mann \ Mr. Patchin \]

[Stamp — Rec'd JUN 5]

Letter No 96
(Trip series)

Airmail 6.1.35
NY 6.5.35

W. R. GRACE & Co.
LIMA-PERU

ORIGINAL AIR MAIL LETTER

COPY FOLLOWS BY STEAMER

Lima, May 31, 1935.

A. Garni, Esquire,
New York.

Dear Garni,

GRACE LINE AGENTS OF PANAGRA & PANAIR

Mr. Chenea has expressed himself on a number of occasions as very much impressed by the effectiveness of the agency service on the West Coast. He has on a number of occasions asked why the Grace Line in New York could not sell Panair and Panagra tickets and I have told him that I would look into this matter on my return.

It occurs to me that this suggestion might afford a very convenient way for developing some independent Panagra traffic effort in New York which I feel to be definitely desirable. Specifically, it would fit in with Mr. Ickehart's suggestion discussed in my letter No 7 as the man who is

doing this work might well fill in the rest of his time as the Panagra representative in the Grace Line office and in soliciting business from New York. I am not sure how the idea would appeal to Daulton but I do not see that it would be doing anything different in New York than we are in effect doing all along the Coast. Incidentally there expressed strong belief in the theory of having people in the steamship business also handling air traffic as he feels that the two work together very well and that the air business does not suffer from this association in any way. Daulton may, of course, feel that the same is not true of the association as far as the steamship business is concerned.

PANAIR OFFICE, CRISTOBAL.

Mr. Chotea has also expressed a strong desire that Panair have their office in our building at Cristobal. There are [fol. 5011] of course, a good many advantages in this from our standpoint but there are also some important disadvantages. I would not be in favor of a joint office here such as in Buenos Aires because it would only be fair that such an office should be under our direction and I am not sure that it would suit us to be in the position of having to begin backwards in such a joint representation. If it were a case of Panair simply having a separate office in our building I don't quite see how we could find room for them. In any case I doubt if Trippe would approve of this idea.

Very truly yours,

S. Hixson J. Rose

4936

1fol. 5018.

W. R. Grace and Company Exhibit 126

W. R. GRACE & CO.
NEW YORK

Delray, March 2, 1938

Dear Roig,

I have been corresponding with Patchin about his work, and attach hereto a letter I have written to him today making a suggestion which I think has merit.

As I wrote to you the other day, the success of Panagra depends not only on cutting down expenses, but on continually increasing revenue. I feel that when we inaugurate the direct Douglas service from Cristobal to Buenos Aires by the two routes, both of which go into the centre of Colombia and touch all the important points of Peru and Ecuador, one of which touches all the important points of Bolivia and most of those of the Argentine, and the other the points of Chile and most of the other important points of the Argentine, we have something to sell to the public which is exceptional. Furthermore, with the entry into Colombia and Ecuador, and the protecting of the diagonal service, we have much more to sell than we have had in the past.

I want to avoid doing anything that would relieve Chenea of the interest that he has in building up business. On the other hand, I don't think that his effort is bearing great results, and I feel that if we are going to fill our planes we will have to supplement his effort with a campaign of our own.

Patchin has all the knowledge and qualifications for beginning quietly to undertake this, and I would be inclined to authorize his taking on a young man to undertake it. The investment in French has been a profitable one.

fol. 3015

W. R. Grace and Company Exhi

Delray,
January

Dear Roig,

PANAGRA

I think I mentioned to you the idea that
Russell Grace had called attention to
Cargill turning his mind to the expensi
so vitally important that we should bring
all along the line, and it is also so impo
should be done with a benefit and not a pr
agra service, that if you can spare Dougla
good thing for him to cut out everything e
trate on this particular problem with th
could gradually work out a program which
into force.

If you are successful in working out, thro
assistance, some plan for improved manage
rather important for you to take anoth
on the ground,
promptly to work out a definite plan of a
efforts along the lines I have indicated wou
way for your action.

Yours sincerely,

(Sgd) P. S

Harold J. Roig, Esq.,
New York, N.Y.

...mmar 124

...y, Florida
...ary 11, 1968

...and you said that
... to of Douglas
...s reduction. It is
...ng down expenses
...portant that this
... prejudice to Pan-
...glas it might be a
... else and concen-
... the idea that he
...gh you could put

...hrough Whitney's
...gement. I think it
...other trip fairly

... action. Douglas'
...ould prepare the

S. Lenhart

fol. 5016

W. R. G

Dear Roy:

I have your lett

The memorandu
ported to me yes
Branch and Lano
that they were alle

I feel that the
trip for Panagra
creased income w
I rather feel that
creased, although
We are not anxious
ing the third trip.

The other emplo
Gregor and get a
analysis of expens
ing operations, c
every minute neces

Garnt obviously
agree to a solutio
be practical to ad
the other hand, he
can undertake. M
you is to get out o
and get expenses
with you, it seem
thority to do about

fol. 5017 The

GRACE AND COMPANY EXHIBIT 122

No. 93

NEW YORK, March , 1928.

Esq.
AY, Florida

r's:

EASTERN AIRWAYS

ed yours of the 4th instant. Joe Ighehart
elling me confidentially that some time be
and 20th April the share issue of the new
s will be offered, and that if we wanted to
probably be arranged.

e total issue will be 100,000 shares at $10
company's earnings for 1927 were sup
neighborhood of $350,000.

matter to Mr. Grace, who was at first
ed to make an investment of this char
, however, that over a period of years
r operate a service right up to Miami
up with Eastern Airways or else change
e long run it will probably be considered
save that enterprise in its present posi

ring the next few years the number of
plean will probably be increased from
ntially to six trips

Scadta is now 31% but that we were not quite sure as to the exact form in which the 50 odd percent which Panair previously held in addition to the 31% had been actually [fol. 5020] disposed of. In other words, he understood quite clearly from this that Panagra's line is seriously menaced by the Lufthansa people, who may or may not be aided by Scadta, who in turn may or may not be American-controlled.

Coming back to the beginning of my conversation, I stressed the importance of losing no time to work out some sort of a traffic pool agreement with Lufthansa and Air-france but that before taking any commitment we felt it our duty to advise the Post Office Department of these developments. Mr. Branch said that while we were not obligated to do this legally, he was naturally interested in developments of this character and went on to suggest that we discuss this fully with some member of the Inter-departmental Committee on Aviation. This latter step has already been taken this morning by Patchin, who discussed it fully with Judge Moore, who expressed himself about in the same way as did Mr. Branch.

In other words, we are entirely clear on this score and free to go ahead with the negotiation with Lufthansa.

After disposing of this question, Patchin and I discussed the unsatisfactory Miami Panama service at some length and I finally summarized the situation by telling Mr. Branch that there are three reasons why we can no longer defer our request that both trips on this route should be direct trips, i.e., Miami Kingston Panama should be made ~~on~~ in one day. ~~the same day.~~

The first reason I gave him was the imminent Lufthansa expansion up the West Coast to Barranquilla, which, when it materializes, would, with a tie-up by Panair from Bar- [fol. 5021] ranquilla to the U. S. A., virtually enable them to give a faster service between this country and the West Coast of South America, or vice versa.

Mr. Branch seemed to appreciate this fact fully and was, I think, quite impressed.

As a second reason, I outlined to him the facts given us by you in your letter No. 2, which shows conclusively that whereas on the direct trips there are very few delays at the Isthmus, about 75% of the indirect trips are subject to delays of one nature or another. I stressed in some detail the great expense resulting from an unbalanced service, even if the respective arrivals were on time, and the still greater expense to the firm and the inconvenience passengers are put to on the delayed indirect trips.

As a third reason, I stated that we have for many months been actively working on the question of running our entire route from Panama to Buenos Aires over the land route and using uniform equipment up and down the line. In this connection I did not think it necessary to differentiate between DC2s and DC3s. I went on to say that as long as the northern situation, i.e., between Miami and Panama, is not solved by having all of our subsidized trips - at present two per week - run on an even schedule and in one day, it is futile for us to attempt to improve the service south of Panama, not omitting to mention that in order to balance the service south of Panama we now have to run the direct trip late out of Panama on what might be termed a slow schedule as it is not advisable to go beyond Guayaquil, [fol. 5022] whereas the indirect trips, particularly when they are delayed for reasons indicated in your letter, has to be speeded up; also that on occasion we even have to overnight in Buenaventura, which is altogether unsatisfactory.

I do not think I added anything that cannot be substantiated, nor did I leave out any points of importance as discussed between us in cables and correspondence. The upshot of this conference was that Mr. Braniff fully appreciated the situation we are in and he was very frank in saying that our suggestion should be supported if we can get Trippe to agree to it. He went further than this and said that there is so much talk in Washington nowadays about Panair's monopolizing all off-shore aviation, that from the standpoint of Panair, the Post Office Department and Panagra, it would really be better to separate the two enterprises entirely and have Panagra extend its services to the U. S. A., i.e., Miami.

I told him that this has been our idea for some time; that we were ready to put up the necessary capital; and he promptly proceeded to ask what rate we would give him on such a Caribbean service. I told him that this is a matter that would have to be studied, and in reply to his question as to whether we had any experience in operating overwater, I referred him to our water route from Panama to Guayaquil, which we have operated successfully for ten years with sea equipment.

commercially

He also asked whether we could operate a line from Miami to Panama without going to Kingston, and I told [fol. 5023] him that we believe a sufficient amount of international traffic could be developed to make a direct route from Miami, via Havana, Providence Island, etc., pay.

The final net result was that Branch suggested that with reference to the additional direct trip to Panama, we should make our presentation, giving our reasons as outlined in the conversation, and regarding the question of extending Panagra's operation to the U. S. A., we should study this matter in an effort to find a solution.

These are about the high spots of our conference and I may write you a little more in detail by next week's air mail.

Very truly yours,

[fol. 5024]

W. R. Grace and Company Exhibit 128

COPY OF HANDWRITTEN LETTER

PERSONAL.

[Handwritten notation—Plan to meet the German drive.]

Hotel Statler, Cleveland,
September 5, 1938

Dear Harold,

All the members of the C.A.A. are here. Also the Administrator, The Secretary, General Counsel (your old

sents for us—Panair and Panagra—to lay out a new campaign. I felt the same way. Of course there is the question will the U.S. come across. I think, yes.

As to B's strong feeling the W.C. route U.S. to B.A. should be separate, I fear he may be getting too far out in front at this stage. There is a strong White House influence always *potential* in these matters and if the word should be passed from above that it is best that the Government back *one company* or one system in L.A. B's ideas would encounter formidable resistance and how long he would persist in such a situation is problematical.

Later—When I saw him again this A.M. he remarked that what he said to us he had said long ago to J.T. He added that even out here aviation people were constantly taking him aside and asking why Panair should have so much of a monopoly in the foreign field. Why couldn't the North Atlantic be opened up to more competition, etc., etc.

There is, he says, no particular person that he knows of fomenting the agitation in New Orleans but the N.O. Association of Commerce long ago pled with the P.O. Dept. for service to Yucatan.

I go to Chicago tonight and probably sit in at the Conference the C.A.A. is to have with representatives of the [fol. 5026] industry which is to be just a sort of a get acquainted meeting I believe. I'll leave Chicago at 1 p.m. for New Orleans by train. The C.A.A. goes back to Washington Tuesday p.m. or Wednesday a.m.

Sincerely yrs.

RHP

[fol. 5027]

W. R. GRACE AND COMPANY EXHIBIT 129

No. 10
(HJR Trip Series)

ATLANTA, Ga., October 18, 1938.

D. S. Iglehart, Esq.,
NEW YORK.

Dear Mr. Iglehart:

ATLANTA CRISTOBAL MAIL SERVICE

Referring to our several telephone conversations, our further comments on the plan suggested in your letter No. 1 are as herein.

Route:

The route in a general way appears preferable to the New Orleans route. For the entire distance to Havana it is at no time more than 120 miles off shore and over this entire sector is at all times within relatively easy distance of existing airports in Georgia, Alabama, Florida and Cuba. The 950-mile sector between Cuba and Cristobal is over open water, there being so far as we know no airport for land planes in Jamaica.

The following comparative route mileages are of interest and would appear to indicate that, granted equipment of equal speed and same departure from New York, the Atlanta route offers a considerable advantage over New Orleans, but not over Miami. From Chicago, however, the Atlanta route offers an advantage over Miami. The Atlanta route as a mail line only seems also more practical than a passenger route from Miami on the same schedule because such a schedule would hardly be practical for passengers on account of the middle-of-the-night arrivals at way stations.

ably encounter resistance from the Post Office, whose disposition would probably be rather to move the present 6 o'clock departure to 8 or 9 o'clock in order to get the full mail movement on the day of departure. The present N. Y. P. O. closing time for the 9 o'clock mail from Newark is, I think, 6 PM, and assuming the same three hours between closing and departure time on the new service, would mean that a 5:20 o'clock departure would require a 2:20 N. Y. P. O. closing. This would probably not be attractive to the Post Office, especially in connection with a purely mail service. On the other hand, it would seem that the three hours' time might be improved, and, in any case, with departures only two or three times per week the mail of the full day of departure is not after all the principal part of the mail and should not be given the same significance as it might be entitled to in the case of a daily service. Most letters even on the day of departure could be mailed by noon.

On the basis of the above assumptions the southbound [fol. 5031] schedule could be worked out as below. For purpose of ready comparison we have set it up in parallel with existing schedules.

SOUTHBOUND

Present Schedules			*New Route Schedule*	
Fri.	9:00 PM	Lv. Newark	5:20 PM.	Fri.
		Ar. Atlanta	10:20 PM	"
		Lv. Atlanta	10:50 PM	"
Sat.	5:30 AM	Ar. Miami		
"	7:30 AM	Lv. Miami		
"	5:05 PM	Ar. Cristobal	8:15 AM	Sat.
	(Panagra)			
Sun.	6:30 AM	Lv. Cristobal	8:45 AM	"
	(UMCA)			
"	7:35 AM	Lv. Cristobal		
	(UMCA)			
"	11:10 AM	Ar. Medellin		

Present Schedules			*New Route Schedule*	
	(Panagra)			
"	No stop	Ar. Medellin	11:45 AM	"
		Lv. Medellin	12:00 M	"
"	1:45 PM	Ar. Cali	1:45 PM	"
		Lv. Cali	2:05 PM	"
"	5:15 PM	Ar. Guayaquil	5:15 PM	"
Mon.	6:00 AM	Lv. Guayaquil	6:00 AM	Sun.
"	12:10 PM	Ar. Lima	12:10 PM	"
"	12:44 PM	Lv. Lima	12:45 PM	"
Tues.	1:50 PM	Ar. Santiago	1:50 PM	Mon.
Wed.	7:15 AM	Lv. Santiago	7:15 AM	Tues.
"	2:45 PM	Ar. B. Aires	2:45 PM	"

[fol. 5032] Elapsed time on this proposed new route schedule between Newark and Cristobal is 14 hours and 55 minutes against 20 hours and 5 minutes elapsed time between the same points via Pan American's present direct trip, a saving of 5 hours and 50 minutes. Additionally the earlier departure from New York makes possible a connection at Cristobal which puts the mail at destination from there on 24 hours ahead of present schedule.

Northbound our present schedule arrives in Cristobal at 3:40 PM. On the basis of the same assumptions as above and the inauguration of a connecting Eastern Air Line service between Atlanta and New York and assuming in this case that the Post Office, as would be necessary to avoid delay at Crisfobal, would work the mail on the plane between say Cali and Cristobal, we could offer the following northbound schedule:

Tues.	3:40 PM	Ar. Cristobal (present schedule)
"	4:16 PM	Lv. Cristobal
Wed.	1:35 AM	Ar. Atlanta
"	2:05 AM	Lv. Atlanta
"	7:05 AM	Ar. Newark

This would give a day's advantage over the present Cristobal/Miami/New York schedule under which mail arriving via Panagra on Tuesday night does not leave Cristobal

until Wednesday morning and gets to New York Thursday morning.

Atlanta Airport and Facilities: Exhibit 1, attached, gives description of these. As the fields regularly used by DC-3's there would presumably be no difficulty with Lockheed 14's. Eastern Air Lines' main shops are in Miami and apparently such work as they have done in Atlanta is done by the [fol. 5033] Delta Air Line shops. These would probably not be adequate for complete maintenance of our Lockheeds but presumably we could arrange with Delta to provide some additional machinery and have them attend to major maintenance of the Lockheeds on a basis.

Capital Investment: We estimate this as below on the following assumptions: Use of existing airports at Atlanta and Cristobal, use of existing fields as emergency fields en route, use in part of existing radio ground facilities at terminals and en route, major overhaul by existing shops (with some additions) at Atlanta and minor repairs by Pan American Airways at Cristobal. Atlanta shop and radio facilities will have to be looked into more fully when the plan has reached a point making it practicable to arrange with Delta to go into the matter in detail.

Flying Equipment:	
2 Lockheed 14's at $85,000. each for planes plus $5,000. each for flotation equipment	$180,000.
2 spare engines	18,000.
2 spare propellers	4,000.
Plane and engine spares	27,000.
Radio:	
D. F.'s in planes and 1 spare	1,500.
Radio in planes and 1 spare	6,000.
Radio spares	4,000.
Radio maintenance equipment	2,000.
Additional ground radio facilities	15,000.
Additions to Delta shop facilities at Atlanta	25,000.
Automobiles	
2 station wagons, one at each terminal	2,000.
Forward	$284,500.

[fol. 5034] Forward	$284,500.
Surveys and Familiarization Flights	20,000.
Furniture & Fixtures, Stationery, Supplies, etc.	2,500.
Cash:	
Guarantee deposits	25,000.
Self-insurance fund, if carried	90,000.
Working capital, 2 months' expenses	60,000.
Total	$482,000.

Expenses: We estimate these roughly, based on route mileage of 1,725 miles, 2 round trips per week, making 358,800 productive flying miles per year, as follows:

General Salaries	
Manager, Engineer, Bookkeeper and Stenographers	$ 15,000.
Operations	
Salaries and wages	39,840.
Fuel	36,732.
Sundries (including joint facilities)	28,896.
Maintenance	
Joint facilities	50,000.
Materials	27,360.
Sundries	25,596.
Radio	
Salaries and wages	15,000.
Sundries (including joint facilities)	23,400.
Forward	$261,824.

[fol. 5028]

	To Cristobal via			
	Atlanta	N. O.	Miami-Present Route	Miami-Direct Route
Newark to Atlanta (EAL)	802			
Chicago to Atlanta (EAL)	648			
Newark to New Orleans (EAL)		1,231		
Chicago to New Orleans (C&S)		909		
Newark to Miami (EAL)			1,196	1,196
Chicago to Miami (EAL)				1,275
Atlanta to Cristobal	1,725			
New Orleans to Cristobal (via Merida)		1,650		
Miami to Cristobal			1,300	1,140
Total Newark to Cristobal	2,527	2,881	2,496	2,336
Total Chicago to Cristobal	2,373	2,559	2,575	2,415

Schedule:

Assuming operation with Lockheed 14's as suggested in Eddie Allen's memorandum of August 8, 1938, on the basis of the non-stop route and the operating figures given in that memorandum, the southbound schedule, based on existing Eastern Air Lines schedule and allowing one hour in Atlanta and two hours (the average time now used although schedule only allows one and a half hours) in Cristobal to work the mails, would be, in Eastern Standard Time, as follows:

6:00 PM	Leave Newark
12:55 AM	Arrive Atlanta
1:55 AM	Leave Atlanta
11:20 AM	Arrive Cristobal
1:20 PM	Leave Cristobal

In order for Panagra to reach Guayaquil by daylight and have its schedules meet satisfactorily weather conditions through Colombia we ought to leave Cristobal not later than our present scheduled departure hour on the Wednesday

trip connecting with the Barranquilla plane, say not later [fol.5029] than 9:30 AM. Even this does not allow time for a Quito stop. For the same reasons indicated above, our deadline for leaving Cali is 2:30 PM. To make a 9:30 departure from Cristobal we would have to find 5 hours 30 minutes improvement in the above schedule. To carry out the plan, we would also have to find an additional 45 minutes between Cristobal and Cali for the Medellin diversion and stop. This would mean advancing the Cristobal departure from 9:30 to 8:45, which could readily be done, and passengers from Miami make their connection, assuming Pan American connects from Miami in one day on both trips, or on the trip via Barranquilla, arrives at Cristobal at 8 AM in accordance with schedule. But this would not allow time for working of the mail from Barranquilla unless it were done on the planes between there and Cristobal. We assume, however, Pan American would, under this plan, run two direct one-day trips from Miami to Cristobal.

Eastern Air now take 6 hours 55 minutes to fly the 802 miles between New York and Atlanta on the night trip. It would seem that this might be reduced by at least one hour and fifty-five minutes to five hours. On their day schedule leaving Newark at 9 AM they take only five and a half hours for the run and this is an easy schedule which might well be cut by 30 minutes.

If the working of the mails, for which three hours is allowed in the above schedule, could be done on the planes, as you suggest, the time required for shifting the mail from Eastern Air Lines plane to the Lockheed at Atlanta might be cut down to 30 minutes, and from the Lockheed to Pan [fol. 5030] agra's plane at Cristobal to 30 minutes, a total of an hour, giving us a saving under this heading of 2 hours. This would make a total saving in the above schedule of 3 hours and 55 minutes, leaving 40 minutes of the additional 45 minutes for the Medellin call to be found by advancing the departure time from Newark to 5:20 PM. Any amount by which EAL's running time could not be cut down by the one hour and 55 minute estimate would have to be found by further advancing their departure time from Newark. Any advance of departure time from Newark would prob-

[fol. 5035] Forward	$261,824.
Depreciation	
Planes	29,000.
Engines	12,240.
Propellers	3,700.
Radio	7,100.
Shop Equipment	5,000.
Automobiles	1,000.
Furniture & Fixtures	800.
Self-insurance (8c per mile)	28,704.
Public (Mail Clerks) and Employees Liability	5,000.
Agency Fees (Panama Agencies Co.)	1,500.
Total	$355,868.

The total of these expenses, $355,868., on the basis of 358,800 productive flying miles, would be say $1.00 per productive mile, and that is the U. S. Mail subsidy we would need to break even.

Needless to say, the carrying out of this plan presupposes favorable solution of a number of assumptions on which it is based. Various questions of policy referred to in my No. 6 also seem to me to merit some little further consideration. Eddie Allen's figures should, I think, be checked with him further, especially the question of speed under actual operating conditions, prevailing winds, etc. Whether the Safety Board would approve the use of the Lockheed 14 for an exclusively mail service on this run, only they can say. Unless it were contemplated to run the line more or less indefinitely for mail only it ought perhaps also to be borne in mind that its expansion into a passenger service whenever that was undertaken would be confronted [fol. 5036] by the problem of a considerable capital expenditure and somewhat limited traffic possibilities due to the absence of stops between the terminals.

Granted favorable resolution of all the foregoing, the plan would certainly give a greatly improved mail service

with a minimum capital investment and at a minimum cost to the government.

Very truly yours,

(Sgd.) H. J. Ross

P. S. If we could only find some way to work it out through Panagra instead of as an independent Grace operation, a beautiful picture might be made operating the Atlanta route via the above schedule with Boeing 307 stock planes as we at one time discussed and continue them through to Guayaquil, their extra speed permitting inclusion of the Quito call. Campbell suggests we might even make an arrangement with EAL under which they would run the planes right into New York over their route, the Atlanta New York sector being to their account. On such a run, while there would be no way business between Atlanta and Cristobal, it is not impossible that the through Colombian business (Scadta could make a good connection with the above schedule from Bogota) passengers, mail and express (all fairly heavy) would more than compensate for the lack of way to way traffic north of Cristobal. This would enable a traveller from Colombia to have lunch in [fol. 5037] Bogota or Medellin and be in New York for breakfast the next morning. Or in reverse, to leave New York at the end of a business day and be in Medellin or Bogota in time for lunch the next day.

H. J. R.

[fol. 5038]

W. R. Grace and Company Exhibit 130

NEW ORLEANS ROUTE

Tuesday—April 29, 1941

Mr. Trippe telephoned regarding Government airport development and publicity with particular reference to my memorandum to Mr. Young dated April 3rd. After discussing these matters, I brought up the question of New Orleans and stated that Garni and I would like to

talk to him alone, or with Mr. Whitney, about this subject. He was entirely non-committal as to whether he would or would not talk about it but said he was leaving for Washington that day and would not be back until Friday morning. As the hearing was set to begin on Friday morning, this meant that the conversation would probably take place after the hearing was under way.

Wednesday—April 30, 1941

Garni and I went to the Washington office of Pan American Airways. We saw Mrs. Archibald and told her we were anxious to talk to Mr. Trippe. She said that he was out at the moment. We suggested that we would see him any time he came in, have lunch with him, or see him any time during the afternoon at his convenience. She said that he had an appointment for lunch and did not know what his afternoon appointments might be. I asked her to speak to Mr. Trippe when he came in and tell him we had called and were anxious to see him and would come over any time at his convenience.

Thursday—May 1, 1941

Between 4:30 and 5:00, at the Grace Line office in Washington, I spoke to Henry Friendly and asked him if it would be possible to postpone the New Orleans hearing which was coming on the next morning in order to give us an opportunity to discuss with Mr. Trippe the possibility of Panagra's filing an application. I told him of our effort to see Mr. Trippe on Wednesday as explained above, and that we had heard nothing from him or from Mrs. Archibald from that time to this which put us in a very embarrassing position with the hearing coming on the next morning. He said that while a short delay might not be prejudicial, he could not ask even for a short delay on behalf of Pan American and would be obliged to oppose any such request as he had been opposing applications for adjournment by Export and could not now be put in the position of asking

adjournments. I told him that this might, of course, require that W. R. Grace & Co intervene in the proceedings in some way or another to hold the line.

Friday—May 2nd

Having decided, in view of Mr. Trippe's failure to see us, and Friendly's inability to adjourn the hearing, that there was no course open but for W. R. Grace & Co to move to intervene and file separate application, I called up Mr. Whitney from Washington to advise him what we were doing. I was unable to get either Mr. Whitney or his secretary, Miss Burgess, learning later that Mr. Whitney was in the West. Mr. Giarni later tried to (Fol. 5033) get Mr. Whitney at the New York office and Mr. Trippe at the same place and in Washington for the same purpose, but without success. He was also unable to get Mr. Young who was away from the office ill but did get Mr. Ribl to whom he explained the situation. We filed intention to file application for the New Orleans route and informal application, serving the former on all U. S. air carriers as per list received from the C.A.B. Later on, Friendly asked Patchin for copies of the papers which were handed him. Friendly said at that time that he was not surprised in view of his conversation with me the other day, that we had taken the action we did.

Saturday—May 3rd

Filed this morning application to intervene and served copies on parties to the New Orleans proceeding.

[fol. 5040]

W. R. Grace and Company Exhibit 131

=758

copy

July 23, 1941.

Mr. H. Preston Morris, Secretary,
Pan American Airways Corporation,
135 East 42nd Street,
New York City, N. Y.

Dear Sir:

I have your letter of July 22, 1941, in which the suggestion is made that your company and W. R. Grace & Co. submit to arbitration the question of whether Pan American-Grace Airways, Inc. or W. R. Grace & Co. may, under the terms of the agreement of February 14, 1939, apply for a route from the Canal Zone to New Orleans.

The agreement of February 14, 1939, although an agreement between W. R. Grace & Co. and Pan American Airways Corporation, in no way was intended to limit the freedom of action of W. R. Grace & Co. Paragraph 4 of the agreement specifically provides that only "disputes * * * which cannot be settled by the Board of Panagra" shall be determined by arbitration. The question of whether W. R. Grace & Co., directly or through a wholly-owned subsidiary, may file an application with the Civil Aeronautics Board for a route is not a matter over which the Board of Panagra has any control or which can be settled by the Board of Panagra. Under these circumstances, I must respectfully reject your suggestion of arbitration in so far as W. R. Grace & Co. is concerned.

In so far as Pan American-Grace Airways, Inc. is concerned, however, I am glad to submit to arbitration under Paragraph 4 of the agreement of February 14, 1939, the question of whether Pan American-Grace Airways, Inc. may file an application in its own name for a route from the Canal Zone to New Orleans without violating any provision of that agreement. It has always been our position

that the most logical applicant for the proposed route is Pan American Grace Airways, Inc., and for the past several months we have endeavored repeatedly to persuade the Board of Directors of Panagra to this view. As you know, the Directors on the Board of Panagra representing your company have consistently refused to sanction any such action. I therefore, welcome any procedure which may make it possible for Panagra to file for the proposed route in its own name, and I shall be glad to discuss with Mr. Whitney (or any other person) the details of arbitrating this question.

It is recognized, however, that arbitration proceedings of the nature contemplated will consume a considerable time. The hearings in connection with the applications of Pan American Airways Company and American Export Airlines, Inc. have already been concluded and briefs filed with the Examiner, and these cases now stand submitted [fol. 5044] to the Examiner for his report. It is, therefore, urgent that some application be filed with the Civil Aeronautics Board by W. R. Grace & Co. or by one of its wholly-owned subsidiaries immediately in order to preserve our rights in the matter. Under these circumstances, it is our present intention to file an application with the Civil Aeronautics Board by Gulf & Caribbean Airways, Inc., a wholly owned subsidiary of W. R. Grace & Co., and to advise the Civil Aeronautics Board at that time that arbitration proceedings are presently pending between your company and this company as to whether Pan American-Grace Airways, Inc. should be permitted to file for the route, and that in the event it is determined that Pan American-Grace Airways, Inc. may file for the route, the application of Gulf & Caribbean Airways, Inc. will be withdrawn and substituted by the application of Pan American-Grace Airways, Inc.

As you know, this matter has been under discussion for many months without any conclusion having been reached. We do not feel that we can let this matter carry on this way any longer and, although willing to submit to arbitration in so far as Panagra is concerned, we are unwilling to

jeopardize our interests in this matter by withholding the filing of an application by Gulf & Caribbean Airways, Inc.

Very truly yours,

W. R. Grace & Co.

By .....
President

[fol. 5042]

UNITED STATES DISTRICT COURT

For the Southern District of New York

Civil Action No. 90-259

United States of America,

Plaintiff.

—against—

Pan American World Airways, Inc., W. R. Grace and Company and Pan American-Grace Airways, Inc.,

Defendants.

TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

DOCUMENTS

WRG 132 thru WRG 166

[fol. 5043]

W. R. Grace and Company Exhibit 132

[Handwritten notation—sent in this form]

June 20, 1941

C. V. Whitney, Esq.,
Pan American Airways Corporation,
Chrysler Building,
New York City

Dear Sonny,

I hope you will not consider me unduly insistent in asking that Pan American Airways Corporation reconsider its attitude in refusing to agree to Pan American-Grace Airways' applying for the extension of their service from Panama to an American port (New Orleans). Due to the situation in Washington, the matter has become very urgent and requires immediate attention.

I decided to write a letter to the Board of Directors of the latter company, copy of which I attach. I desired that you should see this letter before submitting it but I found that you were not available. I then asked Mr. Roig to see Mr. Morgan or Mr. Colt but they were both absent as is Mr. Trippe. I stated to you in our last meeting that I could not complacently permit that the interests of our jointly owned company should be sacrificed to a theory, the wisdom of which is being seriously put in question and which may have to be abandoned.

I particularly wanted, however, to speak to you before moving again in the matter as whatever I do must be entirely in harmony with our relationship. I have given very care-
[fol. 5044] ful thought and taken advice as to whether our action is at variance in word or spirit with our agreement. I am convinced that it is not.

I am available at any time and hope that you will call me as soon as you are ready to discuss the matter further. I feel that, in this just as in other difficulties in the past, we will find a solution.

I am, with kindest regards,

Sincerely yours,

(Dictated by)
D. S. IoLEHART

[fol. 5045]

W. R. GRACE AND COMPANY EXHIBIT 133

[Handwritten notation: Sent Mr. Whiteford, 11-12-41]

November 12, 1941

Pan American Airways Corporation,
15 Exchange Place,
Jersey City, New Jersey

Dear Sirs:

We refer to your letters of November 4th and July 22nd.

It seems hardly necessary to reply to yours of November 4th in detail. The facts speak for themselves. There was no "agreement under which Pan American Grace was organized" in conflict with the idea of their coming through to a terminal in the United States. There is nothing in the agreement of February 14, 1939 which prohibits the question being raised in the manner in which it has been. The meeting called for November 5, 1941 was in pursuance of that agreement and your refusal to permit your representatives on the Panagra Board to attend that meeting was in direct violation of its explicit terms.

As you will recall, immediately following our receipt of your letter of July 22nd, discussions were begun between Mr. Trippe and Mr. Roig looking to a settlement of our problems and reply to that letter was accordingly deferred pending the outcome of these discussions.

Both of your letters under reply suggest arbitration under the agreement of February 14, 1939. In our opinion the questions at issue do not come within the arbitration clause of that agreement at all except the question of the adequacy of your connecting service between Miami and [fol. 5046] the Canal Zone. As to that, and the other ques-

tions at issue, we would call your attention to the fact that the agreement specifically provides that the questions to be arbitrated are those "which cannot be settled by the Board of Panagra". The action of your representatives who are directors of Panagra in refusing to attend meetings of Panagra called for the purpose of discussing the questions at issue has made impossible even an attempt by the Board of Panagra to dispose of these questions as directors of Panagra acting under their full legal responsibility as such and has thereby eliminated these questions from the arbitration clause of the agreement.

In our opinion, it is in the manifest interest of Panagra and in the public interest that Panagra should apply for a route between the Canal Zone and a terminal in the United States. Your letters under reply deny this and repeat what you have so often and so frankly said before that your Board of Directors and your Executive Committee have considered the matter and decided that this is not in the interest of your company. In our opinion this matter is not one to be decided by your Board of Directors or by your Executive Committee, nor one to be decided with reference to the interests of your company. In our opinion the directors of Panagra are under not only a general legal responsibility as directors but also under a very special duty by virtue of various provisions of the Civil Aeronautics Act and the order of the Civil Aeronautics Board permitting them to hold the interlocking positions which they occupy, to administer the affairs of Panagra as an independent air carrier entirely and exclusively in the interest of Panagra and in the public interest. The [fol. 5047] position which has been so repeatedly and so outspokenly taken by your company and by the representatives of your company who are directors of Panagra, namely, that while acting as directors of Panagra their actions in matters where they consider there is a conflict of interest should be dictated by your Board of Directors and by your Executive Committee and should be governed primarily by what is in the interest of Pan American Airways rather than by what is in Panagra's and the public interest, is at the base not only of the present difficulty but of others which have arisen from time to time.

We feel that the orderly administration of Panagra's affairs, provision for its normal growth and development and its ability to be of maximum service to the United States Government requires prompt clarification of the existing situation. The body best qualified to determine the paramount public interest in the situation is the Civil Aeronautics Board. We see no alternative but to submit the entire matter to the Board for its determination of th following propositions:

1. Whether or not directors of Panagra should pass upon Panagra business brought before them as directors of Panagra and entirely from the stand point of what is in the best interest of Panagra and in the public interest and without regard to the interest of any other company with which interlocking relationships exist.

2. Whether or not Panagra should have the full standing of an independent air carrier in every respect and be in position to take prompt and uncontrolled action in any and all matters without deadlocks, refusal to attend meetings or other negative action by some of its directors having the effect of putting one air carrier (Pan American) in control of another (Panagra).

[fol. 5048] 3. Whether or not Panagra should in the public interest as well as in its own interest forthwith take steps to bring its service through from the Canal Zone to Miami and or New Orleans thus providing an independent through trunk line over the Panagra Route from Buenos Aires to the United States.

Very truly yours,

W. R. Grace & Co.

(sgd) A. Garni
First Vice-President

[fol. 5050]

W. R. Grace and Company Exhibit 134

[Handwritten notation – Office file copy]

[Stamp– Docket 11 17 42 FWB Diary Not Entered FWB —In Charge FJK]

BEFORE THE

CIVIL AERONAUTICS BOARD

Washington, D. C.

Docket No. 707

In the Matter of the Petition and Complaint of

W. R. Grace & Co.

for the alteration, amendment and modification of the certificate of public convenience and necessity of Pan American-Grace Airways, Inc., so as to name a point within the United States as a terminal thereof pursuant to Section 401 (h) of the Civil Aeronautics Act of 1938, as amended.

COMMUNICATIONS FROM THE BOARD WITH RESPECT TO THIS PETITION SHOULD BE SENT TO THE FOLLOWING:

A. Garni, First Vice-President,
W. R. Grace & Co.,
7 Hanover Square,
New York City, New York,

and

Whiteford, Hart & Carmody,
815 Fifteenth Street, Northwest,
Washington, D.C.

[fol. 5051]

BEFORE THE

CIVIL AERONAUTICS BOARD

Washington, D. C.

In the Matter of the Petition and Complaint of

W. R. GRACE & Co.

for the alteration, amendment and modification of the certificate of public convenience and necessity of Pan American-Grace Airways, Inc., so as to name a point within the United States as a terminal thereof pursuant to Section 401 (h) of the Civil Aeronautics Act of 1938, as amended.

This petition and complaint of W. R. Grace & Co. represents to the Civil Aeronautics Board as follows:

1. The full name and address of the Petitioner is W. R. Grace & Co., 7 Hanover Square, New York, New York.

2. Petitioner, a Connecticut corporation, has been engaged in business in Latin America, particularly the countries on the West Coast of South America and Central America, for nearly a century. In 1929, jointly with Pan American Airways Corporation, hereinafter referred to as "Pan American",* Petitioner formed Pan American-Grace Airways, Inc., hereinafter referred to as "Panagra", and has at all times since owned 50% of the stock of Panagra, the other 50% being owned by Pan American. Petitioner (and its subsidiaries) have represented Panagra since its organization in all countries of the West Coast of South [fol. 5052] America. Petitioner is a very large user of Panagra's service for mail and passengers. Various of the

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*Pan American Airways Corporation is the parent corporation of the Pan American System, of which Pan American Airways, Inc. is the main operating subsidiary. Whenever "Pan American" is used herein, it refers to Pan American Airways Corporation or Pan American Airways, Inc., as the meaning may require.

officers and directors of Petitioner, who are also officers and directors of Panagra, take a direct and active part in all matters pertaining to the management and administration of Panagra's business.

3. Panagra is an air carrier within the meaning of the Civil Aeronautics Act of 1938, as amended, and at the present time holds a certificate of public convenience and necessity issued to it by the Civil Aeronautics Board, which authorizes it to engage in air transportation of persons, property and mail as follows:

> Between the terminal point Cristobal, Canal Zone, the intermediate points Cali, Colombia; Quito, Esmeraldas, Manta, Salinas, and Guayaquil, Ecuador; Talara, Chiclayo, Lima, and Arequipa, Peru; Arica, Antofagasta, and Santiago, Chile; Mendoza and Cordoba, Argentina, and the terminal point Buenos Aires, Argentina; and also between the intermediate point Arequipa, Peru, and the terminal point Buenos Aires, Argentina, via the intermediate points Arica, Chile; La Paz, Oruro, and Uyuni, Bolivia; Salta, Tucuman, and Cordoba, Argentina, and also between the intermediate point Guayaquil and the terminal point Lojo via the intermediate point Cuenca, Ecuador; and also between the intermediate point Oruro, Bolivia, and the terminal point Corumba, Brazil, via the intermediate points Cochabamba, Sucre, Vallegrande, Santa Cruz, Concepcion, San Ignacio, San Jose, Roboire, Puerto Suarez, Bolivia.

4. Panagra was incorporated under the laws of Delaware, February 21, 1929, for the purpose of engaging in commercial air transportation. In March, 1929, it was awarded Foreign Airmail Contract for Route No. 9 by the United States Post Office Department. It was the first American airline to operate a regular scheduled air transport service to Buenos Aires with connections to the United States. Its route runs from the Panama Canal Zone along the West Coast of South America to Arequipa, Peru, where one branch continues along the West Coast to Santiago, Chile, and thence across the Andes to Buenos Aires and the

[fol. 5053] other proceeds across Bolivia and Central Argentina to the same destination. Commencing operations in Peru by July, 1929, Panagra had extended its route to the Canal Zone on the North and to Santiago, Chile, on the South. By October 12, 1929 service had been extended over the Andes and across the Argentine to Buenos Aires. In 1935, an extension of the route from Arica, Chile, to La Paz, Bolivia, was inaugurated, thus connecting Bolivia with the international airway. In July, 1937, the route between Santiago, Chile, and Buenos Aires was diverted to include the important city of Cordoba. In April, 1937, the so-called "Diagonal Route" was instituted, being an extension from La Paz through the central portion of the Argentine to Buenos Aires via Cordoba, serving en route the important cities of Salta and Tucuman, Argentina. In July, 1938, the route which had thus far been operated between Cristobal and Guayaquil over water, was diverted inland with land-plane operation to serve Cali, the principal commercial city in western Colombia. In March, 1939, the route between Cali and Guayaquil was further modified to include Quito, the capital of Ecuador. In 1940 and 1941, in connection with the elimination of German services on the West Coast of South America, hereinafter referred to, Panagra has added to its route extensive local services in Ecuador, a new international service across Bolivia to the Brazilian border where it makes connection with Panair do Brasil at Corumba to provide a second South American trans-continental service and, by management agreement with Lloyd Aereo Boliviano, has assumed management responsibility for the important local services of that company in Bolivia. As a result of all this development and expansion, Panagra is at present operating about 8,000 route miles,—more route mileage than that of any domestic airline in the United States.

5. Coincident with this expansion of its route Panagra has also, particularly during the last two or three years, greatly increased its frequencies, reduced its flying time between terminals and increased its traffic. Frequencies [fol. 5054] over the entire route have been doubled, from two to four round trips per week. Between various points

on the line there have been additional increases in frequency, schedules between Buenos Aires and Santiago having been recently increased to a daily basis. In its pending rate case Panagra is seeking daily service over its entire route and believes such service to be abundantly justified by existing traffic conditions. Scheduled time for the trip between the Canal Zone and Buenos Aires, which was seven days when the service was first begun, is now a little over three days, flying time between terminals having been reduced recently by half a day on three of the four trips and by a full day on the fourth trip. Passenger traffic in the year 1941 will be almost twice what it was in 1940, which was in turn almost twice that of 1939. Panagra has become a great international trunk line providing international air service between Argentina, Chile, Brazil, Bolivia, Peru, Ecuador, Colombia, Panama (all of the countries of South America except the Guianas, Venezuela, Uruguay and Paraguay), the Canal Zone and thence via connecting service of Pan American to the United States. Public convenience and necessity indicate the next normal and logical step in this development to be an extension of this international route to a terminal in the United States.

6. Petitioner believes and therefore alleges that the public convenience and necessity require that Panagra's great international trunk line have a terminal in the United States and that therefore the certificate of public convenience and necessity which Panagra holds should be altered, amended and modified so as to make the northern terminal of Panagra's route, as defined by said certificate, some point or place in the United States, such point or place being Miami or Tampa, Florida, or New Orleans, Louisiana, as the Board may determine to be most suitable in the public interest. Such a terminal would measurably facilitate and improve the service between the United States and the eight [fol. 5055] important South American countries on Panagra's route. It would improve efficiency of operations by making possible through routing of equipment and crews. It would greatly facilitate freight handling in the coming development of that business which Panagra has under active study and which would be greatly handicapped by

transshipment at the Canal Zone. It would enable Panagra to adopt schedules between the Canal Zone and the United States best adapted to the most satisfactory service on the Panagra Route without regard to service on other routes. It would facilitate preferential accommodations between the United States and the Canal Zone for traffic destined to and from points on the Panagra Route south of the Canal Zone. It would make possible basing of crews in the United States. It would forever free the Panagra service from dependence on a connecting carrier between the Canal Zone and the United States whose interests can never be expected to be exclusively service to the Panagra Route. It would give the Panagra Route the standing of an independent American international air line with a terminal in the United States such as every other comparable American foreign air service has and to which Panagra's record and present position abundantly entitle it. By improving and strengthening Panagra's position in these respects, thereby enabling it to render service to the entire satisfaction of the countries on its route, Panagra will be enabled the better to perform its enlarged functions in the present emergency and to retain during the emergency and thereafter the position it now occupies over most of its route as the exclusive instrumentality chosen by the South American countries through which it operates to carry on international air service to and within those countries. All of this is manifestly in the national interest and required by public convenience and necessity.

7. Past experience has demonstrated the importance of these considerations to public convenience and necessity. Panagra's primary function in the public interest is to provide air transportation over its route for passengers, mail [fol. 5056], and express to and from the United States. With its terminal at the Canal Zone its service is always dependent on a connecting carrier between the Canal Zone and the United States. This inevitably restricts its freedom of action and places the efficiency of its operation to some extent beyond its control and in the hands of a connecting line with interests besides the single purpose of serving the Panagra Route. For some time prior to February, 1939,

the connecting service provided by Pan American between Miami and the Canal Zone was not satisfactory and complaint about it was made to Pan American by Petitioner and by Panagra. The matter was discussed from time to time with representatives of Pan American and on February 14, 1939, an agreement was entered into between Petitioner and Pan American Airways Corporation, the two stockholders of Panagra, whereby Pan American undertook to provide better connecting service between the Canal Zone and Miami. A copy of this agreement is attached hereto marked Exhibit "A". Subsequent to the execution of this agreement it was discussed with representatives of the Civil Aeronautics Board, but being an agreement between Pan American Airways Corporation and the Petitioner, and not between air carriers within the meaning of Section 412 of the Civil Aeronautics Act, it was not submitted for approval by the Board. This agreement even at the time of its execution was at best but a partial solution of the problem but it was hoped that it might meet the situation for a period at least. Following the execution of this agreement Pan American provided improved connecting service but such service has always been, and is now, subject to the difficulties and infirmities which obtain with respect to any connecting service, and in recent months has become increasingly inadequate. In recent months large numbers of persons wishing to travel between the United States and countries on the Panagra Route have been unable to do so owing to lack of accommodations on the connecting service between Miami and the Canal Zone provided by Pan Ameri- [fol. 5057] can. No direct connecting service between Miami and the Canal Zone has been provided by Pan American to connect with Panagra's fourth trip inaugurated August 26, 1941, and connection with that trip must be made by slower and more circuitous routes via Brownsville southbound and via Barranquilla northbound. The contemplated service via New Orleans whether furnished by Pan American or by American Export Airlines, Inc. will not relieve the situation as the routes contemplated by both of these parties are not direct connecting services to the Canal Zone but services via Guatemala, designed primarily with a view to Central American traffic. These services will be definitely

slower and provide less accommodation for Panagra traffic than a direct service. The existing connecting service via Miami is generally late in arriving at the Canal Zone making it difficult and on many occasions impossible for Panagra to maintain its southbound schedules and Pan American is now contemplating a change in its connecting schedule which will greatly accentuate this difficulty. Panagra and Petitioner have complained to Pan American of the inadequacy of their direct connecting service in the respects above indicated and have demanded adequate direct connecting service but Pan American have failed to provide such service. Panagra has likewise been unable to obtain any clear assurances as to just what connecting services Pan American will provide for Panagra's additional trips when Panagra service is increased to a daily basis as above indicated. Petitioner alleges that the public convenience and necessity require that regardless of the reasons on which Pan American may rely for not providing adequate connecting service, Panagra should be placed in position to meet the situation itself without being helpless except by dependence on a connecting carrier, to give adequate service between the United States and the countries on the 8,000 mile Panagra Route.

8. During the past year in cooperation with the Governments of the several South American countries concerned [fol. 5058] and with various departments of the United States Government, in furtherance of hemisphere solidarity and defense, Panagra has replaced German airlines over its entire route between the Canal Zone and Buenos Aires. The German route mileage replaced by Panagra includes 590 miles in Ecuador, 670 miles in Peru, 4109 miles in Bolivia and 870 miles in Chile and Argentina. As a result of this development, the only airlines operating on the West Coast of South America are Panagra and bonafide local national lines. The importance of this accomplishment has been greatly increased with developments of the past few days bringing the West Coast of South America into an increasingly important strategic position. It is of the utmost importance in the public interest that Panagra's present position be maintained not only during the present

emergency but after the termination thereof. Dissatisfaction in South America with the American air service which Panagra is able to render will make it easy for European airlines to regain in South America the position they have just lost. Panagra's position can only be maintained by providing service between the countries on the Panagra Route and the United States of a kind which will justify the confidence which those countries have placed in the assurances given by the United States and in the air service provided by Panagra. Petitioner believes that this clearly involves putting Panagra's West Coast international air service on the same operating basis as Pan American's service to the East Coast of South America and on the same basis as all other comparable American foreign air services in respect of a terminal in the United States.

9. Subsequent to the execution of the agreement of February 14, 1939, Pan American applied to the Civil Aeronautics Board for a route between New Orleans and the Canal Zone (Docket No. 3731). A similar application was filed with the Board by American Export Airlines, Inc. (Docket No. 4071). Petitioner was granted leave to inter- [fol. 5059] vene in these proceedings. The report of the Examiner who heard these applications recommends the granting of the application of Pan American. The award of the New Orleans gateway to either Pan American or to American Export Airlines, Inc. would close to the Panagra Route for many years if not forever one of the last remaining important gateways to the United States from South America. Public convenience and necessity require that before this occurs Panagra take appropriate action to place its position as herein described before the Civil Aeronautics Board. Petitioner has been unsuccessful in its efforts to secure authorization from the Board of Panagra for Panagra to file an application for the New Orleans route, or for connecting service via Miami, in accordance with the Agreement of February 14, 1939, and is for that reason obliged to bring the matter before the Civil Aeronautics Board by its own motion. Petitioner has no desire to bring before the Board under existing war conditions any matter which might more appropriately be deferred to a later date and

agrees with the policy expressed by the Board in its re-lease of December 12, 1941. However, believing that the applicants may urge that considerations of national defense require immediate authorization of the New Orleans route, Petitioner feels required in the public interest to see that all facts regarding Panagra's position in the situation are before the Board, before a decision is reached regarding the award of any additional connecting service between the United States and the Canal Zone. Furthermore, Petitioner believes that this petition is the only means by which the Board can be apprised of the importance of a terminal in the United States to the ability of Panagra to perform fully its obligations with respect to national and hemisphere defense.

10. Petitioner is prepared to submit to the Board full and complete evidence in support of the allegations made herein at a public hearing called for that purpose, and to show that Panagra is able to operate a connecting service to a terminal in the United States (subject, of course, to [fol. 5600] governmental regulations regarding equipment and personnel) and that authorization of such service will not unduly prejudice any lines at present operating such connecting service. Prompt disposition of the matter will be greatly in the public interest as it will aid Panagra in the performance of its obligations in South America with respect to national interests and defense and will speed Panagra's preparations to assume additional important operations in the national interest which the future will impose upon it.

11. Petitioner has this day caused a notice of its intention to file the petition and complaint here in with the Civil Aeronautics Board to be served upon each of the scheduled air carriers whose names appear in the list of such carriers issued by the Civil Aeronautics Board on September 30, 1941, by mailing to each scheduled air carrier on the date hereof, by registered mail, postpaid and properly addressed, a copy of the notice attached hereto and made a part hereof as Exhibit "B".

WHEREFORE, Petitioner prays: (1) that in accordance with Section 401 (h) of the Civil Aeronautics Act of 1938,

Southern Aviation Corp., 1000 American Trust Bldg., Nashville, Tenn.

Southwest Feeder Airlines, Inc., Sinclair Bldg., Ft. Worth, Texas.

Transcontinental & Western Air, Inc., 10 Richards Road, Kansas City, Missouri.

Tri-State Aviation Corporation, Irwin, Pennsylvania.

United Air Lines Transport Corp., 5959 S. Cicero Avenue, Chicago, Ill.

Uraba, Medellin & Central Airways, Inc., 135 E. 42nd St., New York, N. Y.

Waterman Airlines, Inc., Merchants National Bank Bldg., Mobile, Ala.

West Coast Airlines, Inc., 627 Insurance Bldg., Seattle, Washington.

Western Air Lines, Inc., P. O. Box 391, Burbank, California.

Wichita Falls Air Transport Company, The, Box 84, Wichita Falls, Texas.

Wiggins, E. W., Airways, Inc., P. O. Box 1089, Providence, R. I.

Wilson, Ray, Inc., Park Hill Airport, Denver, Colorado.

You, and each of you, are hereby notified that W. R. Grace & Co., 7 Hanover Square, New York City, New York, is, this day, filing with the Civil Aeronautics Board a petition and complaint under Section 401 (h) of the Civil Aeronautics Act of 1938, for the alteration, amendment and [fol. 5065] modification of the certificate of public convenience and necessity of Pan American-Grace Airways, Inc., so as to make the northern terminal of Pan American-Grace Airways' route, as defined by said certificate, some point or place in the United States, such point or place being Miami or Tampa, Florida, or New Orleans, Louisiana,

as the Board may deem to be most suitable in the public interest.

W. R. GRACE & CO.,

By /s/ A. GARNI

A. Garni, First Vice-President

December 16, 1941.

[fol. 5066]

W. R. GRACE AND COMPANY EXHIBIT 135

W. R. GRACE & CO.,
7 Hanover Square, New York

April 27, 1942

To the Civil Aeronautics Board,
Washington, D. C.

Dear Sirs:

Pan American-Grace Airways, Inc. has become one of the foremost air carriers in the world. Its route comprises not only one of the longest but also one of the strategic international air routes. As a result of competent and experienced management and operating organization, Pan American-Grace Airways, Inc. has attained a stature which not only justifies but requires its existence as a completely independent air carrier. At the present time its ability as an independent air carrier to fulfill its obligations to the public, and to the Governments of the United States and the eight South American countries which it serves, is being suppressed and its growth and development are being restricted by Pan American Airways Corporation, one of its own stockholders, in order that such developments may not interfere with Pan American's own interests and conflict with its own supposed monopoly of foreign air transportation.

Facts constituting the basis of this allegation are set forth in the memorandum submitted herewith. We stand ready to submit to the Civil Aeronautics Board such further

information as may be required by it in making a full and complete investigation of the matters referred to herein.

We have long hesitated to place this matter before you, hoping that some other solution might be possible, but we have been reluctantly forced to the conclusion that there is no other way of remedying the existing situation. The urgent war needs, the need for better service, for economy of men and equipment, and for erasing the obstacles and impediments to these accomplishments, the need to extend and make more valuable and effective the great organization which Pan American-Grace Airways, Inc. has built up, and to give it full opportunity to render the service to the nation which it is highly competent to render and anxious to perform:—these urgent needs, as well as the long-range interests of the line itself, make it impossible to leave unremedied the difficulties under which Pan American-Grace Airways, Inc. has so long labored.

We, therefore, respectfully request that the Civil Aeronautics Board require Pan American Airways Corporation to cease and desist from the matters and things complained of and require Pan American Airways Corporation [fol. 5067] to divest itself of its ownership of the stock in Pan American-Grace Airways, Inc. to such extent as may be necessary to divest itself of its present negative control of Pan American-Grace Airways, Inc., all in accordance with and as required by Section 411 of the Civil Aeronautics Act of 1938, and Sections 18 and 21 of the Clayton Act (Title 15, U.S. Code) and we further respectfully request that the Civil Aeronautics Board consider and grant the petition dated December 16, 1941 (Docket No. 707) and amend the Certificate of Public Convenience and Necessity of Pan American-Grace Airways, Inc. so as to name a point within the United States as a terminal of the route of Pan American-Grace Airways, Inc.

Respectfully submitted,

W. R. GRACE & CO.

By .....

D. S. Iglehart
President

[fol. 5069]

W. R. GRACE AND COMPANY EXHIBIT 136

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

STATEMENT OF FACTS IN SUPPORT OF LETTER OF W. R. GRACE & CO. TO THE CIVIL AERONAUTICS BOARD, DATED APRIL 27, 1942, RELATING TO PAN AMERICAN-GRACE AIRWAYS, INC.

COMMUNICATIONS FROM THE BOARD ARE TO BE SENT TO THE FOLLOWING:

D. S. Iglehart, President,
W. R. Grace & Co.,
7 Hanover Square,
New York City, New York

and

Whiteford, Hart & Carmody,
815 Fifteenth Street, Northwest,
Washington, D. C.

[fol. 5070]

STATEMENT OF FACTS IN SUPPORT OF LETTER OF W. R. GRACE & CO. TO THE CIVIL AERONAUTICS BOARD, DATED APRIL 27, 1942, RELATING TO PAN AMERICAN-GRACE AIRWAYS, INC.

1. W. R. Grace & Co., hereinafter referred to as "Grace", is a Connecticut corporation with its principal office at 7 Hanover Square, New York, New York. It has been engaged in business in Latin America, particularly the countries on the West Coast of South America and Central America, for nearly a century. With long experience in foreign transportation it saw very early the great future of international air transport. In 1928 it joined with Pan American Airways, Inc., hereinafter referred to as Pan

Subscribed in my presence and sworn to before me by the affiant above-named this 16th day of December, 1941.

MILTON H. BATHRICK
Notary Public

My Commission expires March 30, 1943

MILTON H. BATHRICK
NOTARY PUBLIC
Bronx Co. Clerk's No. 27, Reg. No. 28 B-43
New York Co. Clerk's No. 367, Reg. No. 3 B-231
King's Co. Clerk's No. 34, Reg. No. 3155
Queen's Co. Clerk's No. 1425, Reg. No. 5027
Nassau County Clerk's No. 14 B-43
Certificate filed in Westchester County
Commission Expires March 30, 1943

[fol. 5062]

Exhibit "A"

1. One of the Grace directors of Panagra (who shall also be a director of Grace) will be elected President of Panagra and placed in responsible charge of the management of the Company. If at any time the Company's affairs are not being conducted to Pan American's reasonable satisfaction, then the President will resign.

2. Pan American will inaugurate on or before April 1, 1939, a second direct trip between Miami and Cristobal, and will maintain an adequate direct connecting service between Miami, or some other U. S. port agreed upon, and Cristobal connecting with Panagra's through mail schedules. If at any time Pan American shall not comply with the foregoing, then Pan American will cause its directors on the Board of Panagra to take such action as will permit Panagra's applying to the C.A.A. for a certificate to operate this connecting service, provided that, irrespective of any determination made as provided in paragraph 4, Pan American shall not be in any way precluded from maintaining before the C.A.A. that its service is satisfactory and should be continued and that no other service is required in the public interest. With the exception of the second direct trip between Miami and Cristobal above referred to, Pan American

shall not be obliged to operate any schedules and service not designated by the Post Office Department as mail schedules but will use their best efforts to have designated as mail schedules any additional trips required to make connection with any increase in Panagra's through mail schedules.

3. It is agreeable to the parties that Pan American-Grace shall continue to utilize the respective services of Grace and Pan American and said services in the same proportion as presently allowed, provided that the services to be rendered by the respective parties are satisfactory to Pan American-Grace.

4. Any disputes arising under this general plan and every phase thereof, including without limiting the generality of the foregoing, determination of "Pan American's reasonable satisfaction" referred to in paragraph 1 above and of "adequate direct connecting service" referred to in paragraph 2 above, which cannot be settled by the Board of Panagra shall be determined by Messrs. D. S. Ingleheart and C. V. Whitney. If Mr. Ingleheart or Mr. Whitney shall be unable to act, or unable to agree in connection with any matter arising under the foregoing paragraphs, then, unless otherwise agreed between Grace and Pan American, such matters shall be determined by arbitration by an arbitrator or arbitrators appointed by Messrs. Ingleheart and Whitney, or failing such appointment, by three arbitrators, one appointed by Grace, one by Pan American, and a third by those two, and the party adjudged in default shall, at the discretion of the Arbitrator, be given such reasonable time to correct the default as the Arbitrator may fix.

5. This agreement shall continue to February 1, 1944, and thereafter until cancelled by Pan American or Grace on six months' written notice.

AGREED—February 14, 1939

W. R. GRACE & CO.

By (Sgd) HAROLD J. ROSE—Vice Pres.

PAN AMERICAN-AIRWAYS CORPORATION.

By (Sgd) J. T. TRIPPE, Pres.

[fol. 3063]

Exhibit "B"

To Aero Pickup Service Corp., 3110 N. Boulevard, Richmond, Va.

Aerovias Nacionales Puerto Rico, Inc., 37 Recinto Sur St., P. O. Box 528, San Juan, Puerto Rico.

All American Aviation, Inc., 200 West 9th St., Wilmington, Del.

American Airlines, Inc., New York Municipal Airport, La Guardia Field, New York, New York.

American Export Airlines, Inc., 25 Broadway, New York, New York.

Automatic Air Mail, Inc., Lost Nation, Iowa.

Braniff Airways, Inc., Braniff Building, Oklahoma City, Okla.

Burke, Andrew J., 614 East Cook Street, Santa Maria, Calif.

Canadian Colonial Airways, Inc., New York Municipal Airport, New York, N. Y.

Caribbean-Atlantic Airlines, Inc., P. O. Box 3214, San Juan, Puerto Rico.

Catalina Air Transport, Catalina Airport, Avalon, Calif.

Chicago & Southern Air Lines, Inc., Municipal Airport, Memphis, Tenn.

Continental Air Lines, Inc., Municipal Airport, Denver, Colorado.

Delta Air Corporation, Selman Field, Monroe, Louisiana.

Eastern Air Lines, Inc., 10 Rockefeller Plaza, New York, New York.

Essair, Inc., Republic Bank Building, Dallas, Texas.

Hannaford Aircraft Co., 1604 Pioneer Bldg., St. Paul, Minn.

Inland Air Lines, Inc., Box 1811, Casper, Wyoming.

Inter-Island Airways, Ltd., Inter-Island Building, Honolulu, Hawaii.

Kansas City Southern Transport Company, Inc., 114 West 11th St., Kansas City, Mo.

Marquette Airlines, Inc., Lambert St. Louis Municipal Airport, Robertson, Mo.

Mayflower Airlines, Inc., Nantucket, Mass.

Mercury Development Corp., 445 N. Pennsylvania St., Indianapolis, Ind.

Mid-Continent Airlines, Inc., Municipal Airport, Kansas City, Missouri.

National Airlines, Inc., Municipal Airport, Jacksonville, Florida.

[fol. 5064] New York and Bermudian Air Lines, 77 River Street, Hoboken, New Jersey.

Northeast Airlines, Inc., Boston Municipal Airport, East Boston, Mass.

Northwest Airlines, Inc., Holman Municipal Airport, St. Paul, Minnesota.

Oregon Airways, Inc., Administration Bldg., Swan Island Airport, Portland, Ore.

Pan American Airways, Inc., 135 E. 42nd St., New York, N. Y.

Pan American Airways Company (Delaware), 135 E. 42nd St., New York, N. Y.

Pan American-Grace Airways, Inc., 135 E. 42nd St., New York, N. Y.

Pennsylvania-Central Airlines, Corp., Allegheny County Municipal Airport, Pittsburgh, Pa.

Seaboard Airways, Inc., Seaboard Airline Railway Bldg., Norfolk, Va.

the Board, after due notice and hearing, and due finding that public convenience and necessity so require, alter, amend and modify the certificate of public convenience and necessity held by Panagra so as to make the northern terminal of Panagra's Route, as defined by said certificate, some point or places in the United States, such point or place being Miami or Tampa, Florida, or New Orleans, Louisiana, as the Board may deem to be most suitable in the public interest; (2) that further action in Dockets Nos. 373 and No. 497, be stayed pending determination of this proceeding; and (3) that the Board take such further action in the premises as it may deem necessary or proper.

Respectfully submitted,

W. R. GRACE & CO.

By /s/ A. GARNI

A. Garni, First Vice President

Dated December 16, 1941

[fol. 5062]

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

A. Garni, being duly sworn, deposes and says: That he is First Vice President of W. R. Grace & Co., Petitioner herein; that he has read and is familiar with the contents of said Petition and Complaint; that he intends and desires that the Board, in acting pursuant to said Petition and Complaint, shall place complete and full reliance upon the accuracy of each and every statement contained therein; that he is familiar with the facts therein set forth and to the best of his information and belief, every statement contained in the Petition and Complaint is true and no such statement is misleading.

/s/ A. GARNI

A. Garni, First Vice President

interviews and comments of its officials, as well as in its official conduct in such matters as those hereafter referred to, repeatedly and consistently sought to subordinate Panagra's position as an independent entity and to establish the position that Panagra is not an independent company but merely a subordinate part of the Pan American Airways System, controlled by Pan American Airways Corporation. Similarly, in pursuance of this policy, Pan American, although in its own activities an outstanding example of expansion, has resisted much of the expansion and development of the Panagra Route as above described. For example, Pan American opposed Panagra's overland route across Colombia via Cali. Pan American delayed approval of Panagra's extension into Bolivia to such an extent that Grace was itself obliged, in order to prevent its falling into the hands of a German controlled company, to acquire the concession from the Bolivian Government in its own name. Grace subsequently turned over this concession to Panagra without payment. Over a period of years and even now, when the public interest and the national defense so urgently require it, Pan American is preventing any application by Panagra for an extension of its route to any terminal in the United States.

(fol. 5075) 6. The so-called "Camaguey stop" incident is illustrative of the precariousness of Panagra's position as an independent air carrier when its interests come into conflict with Pan American's. On November 25, 1941, Pan American filed an application (Docket No. 689) with the Civil Aeronautics Board for authorization to include Camaguey, Cuba, as an intermediate stop on its route between Miami and the Canal Zone. The Camaguey stop while in itself desirable, would, by reason of the additional mileage and ground time, under then existing schedules, have so increased the flying time between Miami and the Canal Zone as to destroy the existing connection with Panagra at the Canal Zone and greatly increase the flight time from the United States to points on the West Coast of South America, as well as to Buenos Aires. The President of Panagra, both before and after the filing of this application, directed the attention of Pan American to the adverse

affect upon Panagra which the approval of this application would have. While these discussions were being held, Pan American, without prior notification of any kind to Panagra, filed with the Civil Aeronautics Board on December 3, 1941, a request for an Exemption Order which would have the effect of permitting the immediate inauguration of Camaguey without the notice and hearing required by the Act. Pan American in making this request omitted to notify the Civil Aeronautics Board in any way of Panagra's interest and concern in the matter and sent a letter to the Board requesting this Exemption Order stating:

> "To the best of the applicant's information and belief, no air transportation enterprise other than applicant's Cuban subsidiary which commits operations to and from Camaguey, has any interest in the condition of service to that point by the applicant."

On December 12, 1941, the President of Panagra filed, on behalf of Panagra, with the Civil Aeronautics Board a petition of intervention in Docket No. 689, so that whenever the Camaguey proceeding was set down for hearing, or otherwise became active, Panagra's interests would be represented and protected. At that time he had no knowl- [fol. 5076] edge of the fact that an exemption request had already been filed by Pan American and had, in fact, already been granted by the Civil Aeronautics Board on the previous day. (Order Serial No. 1434.) Immediately the fact that the Exemption Order had been issued became known to him, he requested an opportunity to appear before the Civil Aeronautics Board in order to present the entire situation. This opportunity was granted and on December 15, 1941, the President of Panagra informed the Civil Aeronautics Board that Panagra was vitally interested in the matter, and that Panagra had had no knowledge of the exemption request. He requested that the Exemption Order be modified so as to postpone the inauguration of service to Camaguey until the stop could be made by Pan American without prejudice to Panagra's service and schedules. This request was granted by the Board and incorporated in an amended Order issued December 16, 1941. (Order Serial No. 1445.)

sions. Because of Pan American's 50% ownership of Panagra, the latter cannot act in such matters except with Pan American's approval. Panagra's resulting utter dependence upon Pan American with respect to connecting service inevitably restricts Panagra's freedom of action and places the efficiency of its operation to a large extent beyond its control and in the hands of a connecting carrier possessing other interests than the single purpose of serving Panagra's route. This obviously places Panagra in a weak and definitely inferior position to Pan American with respect to this competitive service of Panagra and Pan American between the United States and Buenos Aires. At the present time, to maintain competitive schedules between the United States and Buenos Aires equal to or faster than those operated by Pan American, Panagra must rely completely upon the adequacy of connections provided at the Canal Zone by Pan American and over which Panagra has no control whatsoever. Recent developments and the requirements of national defense indicate conclusively that the continuation of Panagra's dependence upon Pan American [fol. 5079] for an outlet to the United States is not in the public interest and should be eliminated and Panagra placed in a position of complete independence with respect to the development of the international air service which it seeks to perform.

9. Grace has repeatedly urged upon Pan American and its directors on the Panagra board that because of the foregoing considerations Panagra should make application to the Civil Aeronautics Board for an extension of its route to a terminal in the United States. Pan American has consistently refused to permit Panagra to file such an application. Early in 1940, when Pan American (Docket No. 373) and American Export Airlines, Inc. (Docket No. 497) applied for the route between New Orleans and the Canal Zone, Grace again endeavored to persuade Pan American to permit Panagra to apply for this connecting route. It was apparent that the award of the New Orleans gateway to either Pan American or American Export Airlines, Inc. might foreclose Panagra from entering any important gateway from South America into the United States. Grace and

the Grace directors on the Panagra Board accordingly urged upon Pan American that it should not permit Panagra's service to be jeopardized by this development but that it should permit the Pan American directors on the Panagra Board to vote to authorize Panagra to apply for the New Orleans route. All of these efforts were unsuccessful. While these discussions were taking place, the applications of Pan American and American Export Airlines, Inc., above referred to, came on for hearing and in order to protect its interests and those of Panagra, pending further negotiation with Pan American, Grace filed an application to intervene in said proceeding which was granted by the Civil Aeronautics Board. Further efforts to persuade Pan American to permit Panagra to apply for the route met with no success. The President of Panagra called various special meetings of the board of directors of Panagra to consider the matter and to authorize action to protect Panagra's position but the Pan American directors of Panagra, constituting one-half of the Board, repeatedly failed and de-
[fol. 5080] clined to attend such directors' meetings and ad-
journments thereof, thus making action by the Panagra board of directors impossible. Pan American itself failed to attend a stockholders' meeting of Panagra called at its request for the purpose of considering the matter, thus rendering impossible any action by the stockholders. Such action and conduct on the part of Pan American and its directors on the Panagra Board was intended and had the effect, by negative control, of preventing Panagra from taking any action whatever toward securing an extension of its services believed to be required in the public interest. Such action and conduct prevented Panagra from even submitting to the Civil Aeronautics Board for consideration the wisdom and public convenience and necessity of any such extension. Pan American considered any such extension to be competitive with its existing service between Miami and the Canal Zone and between Brownsville and the Canal Zone, as well as with its prospective service between New Orleans and the Canal Zone and accordingly exercised its 50% stock interest in Panagra in such a manner as to frustrate any possible adverse competitive result. Action by Panagra being thus rendered impossible, Grace on De-

American*, in forming Peruvian Airways Corporation, which subsequently became Pan American-Grace Airways, Inc., hereinafter referred to as Panagra. Grace has at all times since owned 50% of the stock of Panagra, the other 50% being owned by Pan American. The Board of Directors of Panagra is composed of eight persons, four being nominated by Grace and four by Pan American. Grace and its subsidiaries have represented Panagra since its organization in all countries on the West Coast of South America and in this way its executives everywhere (already highly experienced in foreign transportation) have gained a wide experience in foreign air transport problems and management. Various of the officers and directors of Grace who are also officers and directors of Panagra take a direct and active part in all matters pertaining to the management and administration of Panagra business. Harold J. Roig, a Vice President of Grace, has from the outset been especially active in Panagra's affairs and since 1939, when he became President of Panagra in responsible charge of its business, has devoted most of his time and efforts to Panagra.

[fol. 5071] 2. Panagra is an air carrier within the meaning of the Civil Aeronautics Act of 1938, as amended, and at the present time holds a certificate of public convenience and necessity issued to it by the Civil Aeronautics Board, which authorized it to engage in air transportation of persons, property and mail, as follows:

"Between the terminal point Cristobal, Canal Zone, the intermediate points Cali, Colombia; Quito, Esmeraldas, Manta, Salinas, and Guayaquil, Ecuador; Talara, Chiclayo, Lima, and Arequipa, Peru; Arica, Antofagasta, and Santiago, Chile; Mendoza and Cordoba, Argentina, and the terminal point Buenos Aires, Argentina; and also between the intermediate point Are-

* Pan American Airways Corporation is the parent corporation of the Pan American System, of which Pan American Airways, Inc. is the main operating subsidiary. Whenever "Pan American" is used herein, it refers to Pan American Airways Corporation or Pan American Airways, Inc., as the meaning may require.

quipa, Peru, and the terminal point Buenos Aires, Argentina, via the intermediate points Arica, Chile; La Paz, Oruro, and Uyuni, Bolivia; Salta, Tucuman and Cordoba, Argentina, and also between the intermediate point Guayaquil and the terminal point Lojo via the intermediate point Cuenca, Ecuador; and also between the intermediate point Oruro, Bolivia, and the terminal point, Corumba, Brazil, via the intermediate points Cochabamba, Sucre, Vallegrande, Santa Cruz, Concepcion, San Ignacio, San Jose, Robore, Puerto Suarez, Bolivia."

3. Panagra was incorporated under the laws of Delaware on February 21, 1929, for the purpose of engaging in commercial air transportation. In March, 1929, it was awarded Foreign Airmail Contract for Route No. 9 by the United States Post Office Department. It was the first American airline to operate a regular scheduled air transport service from Buenos Aires with connections to the United States. Its present route runs from the Panama Canal Zone along the West Coast of South America to Arequipa, Peru, where one branch continues along the Coast to Santiago, Chile, and thence across the Andes to Buenos Aires. The other branch proceeds across Bolivia to Oruro where it again divides into one branch proceeding across Bolivia to Corumba, Brazil, and the other through central Argentina to Buenos Aires. Commencing operations in Peru in 1929, by July of that year Panagra had extended its route to the Canal Zone on the North and to Santiago, Chile, on the South. By October of that year service had been extended over the Andes and across the Argentine to Buenos Aires. In 1935, an extension of the [fol. 5072] route from Arica, Chile, to La Paz, Bolivia, was inaugurated, thus connecting Bolivia with the international airway. In July, 1937, the route between Santiago, Chile, and Buenos Aires was diverted to include the important city of Cordoba. In April, 1937, the so-called "Diagonal Route" was instituted, being an extension from La Paz through the central portion of the Argentine to Buenos Aires via Cordoba, serving en route the important cities of Salta and Tucuman, Argentina. In July, 1938, the

route which had thus far been operated between Cristobal and Guayaquil over water, was diverted inland with land-plane operation to serve Cali, the principal commercial city in western Colombia. In March, 1939, the route between Cali and Guayaquil was further modified to include Quito, the capital of Ecuador. In 1940 and 1941, in connection with the elimination of German services on the West Coast of South America, Panagra has added to its route extensive local services in Ecuador, a new international service across Bolivia to the Brazilian border where it makes connection with Panair do Brazil at Corumba to provide a second South American Transcontinental service and, by management agreement with Lloyd Aereo Boliviano, has assumed management responsibility for the important local services of that company in Bolivia. As a result of all this development and expansion, Panagra is at present operating about 8,000 route miles,—more route mileage than that of any domestic airline in the United States.

4. Coincident with this expansion of its route Panagra has also, particularly during the last two or three years, greatly increased its frequencies, reduced its flying time between terminals, and increased its traffic. Frequencies over the entire route have been increased from two to five round trips per week and steps are now being taken to increase this to daily service. Between various points on the line there have already been additional increases in frequency, schedules between Buenos Aires and Santiago having been recently increased to a daily basis. Scheduled [fol. 5073] time for the trip between the Canal Zone and Buenos Aires, which was seven days when the service was first begun, is now three days, flying time between terminals having been reduced recently by half a day. Passenger traffic has been increasing about 100% per year during the past several years. Thus Panagra has become a great international trunk line providing international air service between Argentina, Chile, Brazil, Bolivia, Peru, Ecuador, Colombia, Panama (all of the countries of South America except the Guianas, Venezuela, Uruguay and Paraguay), the Canal Zone and thence via connecting services of Pan American to the United States.

3. A considerable part of the expansion of Panagra's route has been accomplished at the insistence of Grace and in the face of Pan American's opposition. Soon after the organization of Panagra in 1928, it developed that Grace and Pan American entertained basically different philosophies regarding Panagra's status and destiny and that difference of view has continued. Grace has at all times maintained the view that Panagra, while availing itself of the facilities and experience provided by both Grace and Pan American, should be an independent unit free to operate, develop and expand as its own welfare and the public interest might dictate and that its policies, organization and operations should be conducted independently and free of any adverse domination by either of its stockholders. With this in view Grace, while placing at the disposal of Panagra the services and experience of its ranking officials and of its extensive organization in South America, as well as in the United States, has always taken the position that Panagra's affairs should be administered and decisions regarding its policy, management and daily operations taken solely with reference to the best interests of Panagra and the public interest which it is Panagra's duty to serve, and without reference to opposing collateral or related interests of Grace or of Pan American or of any part of Grace's or Pan American's organizations. Pan American, on the other [fol. 5074] hand, has consistently maintained that Panagra should be administered primarily as a part of the so-called Pan American Airways System, that it should be held out to the public as a subordinate part of such system rather than as an independent entity and that its policies and affairs should be determined and administered and its destiny controlled by what Pan American might from time to time deem to be in the best interests of itself and the Pan American Airways System, and in accordance with the broad general view which Pan American has always maintained that all American international air transportation should be in the hands and control of the Pan American Airways System. In pursuance of this policy, and despite efforts of Grace and of the Panagra management to the contrary, Pan American has, in its publicity, advertising, financial reports, published schedules and timetables, public

The President of Panagra had filed the petition of intervention with the Civil Aeronautics Board without seeking authorization from the Board of Directors of Panagra, because he had reason to believe that such authorization could not be secured as the Pan American directors on the Panagra Board would not approve it. At or before the above hearing, Pan American submitted to the Civil Aeronautics Board a letter in which, referring to the action by the President of Panagra in intervening in the proceeding, it is stated:

> "We do not propose to question his authority to do so, although we are entirely aware of the fact he is acting without authorization from his Board of Directors."

The object of this statement was perhaps to cast doubt upon the validity of the action taken by the President of Panagra, possibly to quash Panagra's intervention on that ground without regard to the merits. At best it is a clear warning that Panagra can only act with Pan American's acquiescence even in self defense. The statement leaves no doubt as to the position in which Panagra finds itself with regard to its connecting service between the Canal Zone [fol. 5077] and the United States. Panagra can not even protect this connecting service on which its life is so vitally dependent except by the acquiescence of Pan American which provides that connecting service. Panagra is utterly dependent on the favor of Pan American, its own hands legally tied whenever Pan American wishes to tie them, in any matter where its interests are contrary to those of Pan American.

7. Conclusively demonstrative of the situation complained of is the record of Grace's efforts to have Panagra bring its line through from the Canal Zone to a terminal in the United States. For several years Grace has felt that an extension of Panagra's Route beyond the Canal Zone to a terminal in the United States would be a normal, logical and necessary step in Panagra's development and would be in the public interest. Such an extension would measurably facilitate and improve the services between the United States and the eight important South American countries

on Panagra's route. It would substantially improve efficiency and economy of operations by making possible through routing of equipment and crews, thus increasing utilization of equipment and reducing time lost by crews. It would enable Panagra to establish schedules between the Canal Zone and the United States best adapted to the most satisfactory service on Panagra's route without regard to service on other routes operated by associated lines. It would facilitate preferential accommodations between the United States and the Canal Zone for traffic destined to and from points on Panagra's route south of the Canal Zone. It would make possible the basing of crews in the United States. It would greatly facilitate traffic handling in the coming development of that business, which Panagra has under active study, and which would be greatly handicapped by transshipment at the Canal Zone. It would relieve the Panagra from dependence on Pan American for a connecting service between the Canal Zone and the United States. It would put Panagra's West Coast service on the same operating basis as Pan American's East Coast service. [fol. 5078] It would give Panagra's route the standing of an independent American international airline with a terminal in the United States such as every other comparable American foreign air service has and to which Panagra's record and present position abundantly entitle it.

8. Experience has demonstrated the importance of the considerations mentioned in the foregoing paragraphs. Panagra's primary function is to provide air transportation for passengers, mail and express between the United States and the eight South American countries which it serves. With its northern terminal at the Canal Zone, Panagra's service is now and always has been dependent upon a 50% stockholder, Pan American, for connecting service between the Canal Zone and the United States and any inadequacy or failure of that service creates changes or modification in it by way of schedule changes, service to additional intermediate points, or otherwise, has its effect upon the service which Panagra can render over its route. Problems of this character have arisen on a number of occa-

cember 16, 1941 (Docket No. 707), itself filed an application, pursuant to Section 401 (h) of the Civil Aeronautics Act of 1938, for the alteration, amendment and modification of the certificate of public convenience and necessity of Panagra, so as to name a point within the United States as a terminal of Panagra's route. Reference is made to said application for further facts bearing on this matter. Said application is still pending before the Board. Pan American has filed no answer to said petition but has not changed its previous position since the petition was filed.

10. While conditions such as those above referred to may perhaps be suffered in time of peace, they are intolerable in time of war when the national interest demands that every instrumentality of defense such as an airline in foreign service be free to function to maximum efficiency unhampered by impediments of the character referred to. The situation described does not interfere with the efficient man-
[fol. 5081] agement and administration of Panagra's day to day business, but it has interfered and under existing war conditions will interfere to an increasing degree with the formulation and realization of important policies affecting the present and future welfare of Panagra, and the public service it is able to render, whenever such policies come into conflict with Pan American's present and proposed activities or ambitions. Considerations of national defense require prompt disposition of the questions involved. The public interest and the interests of national defense demand that Panagra be a free and independent air carrier in position to maintain its relations with the public and with the United States Government as an independent entity. It should have an independent standing in the minds of the public and an independent name which will give it that standing, a name under which it can assume full responsibility for its own conduct and avoid criticism for conduct over which it has no control. Its stock ownership and the constitution of its board of directors should be such that it will be in a legal position where it can act in all matters in accordance with the public interest and its own welfare without reference to the desires, interests, or aspirations of any other air carrier and where it can

present to the Civil Aeronautics Board for its determination as provided by the Act, matters involving its interest and the public interest without having its hands tied by the interest of any other air carrier. The war emergency has imposed greatly added burdens and responsibilities on Panagra as an air carrier operating in eight South American countries. Panagra has, in furtherance of national defense, taken over German operations in various parts of South America, has increased its route mileage and augmented its frequencies and will undoubtedly be called upon to further expansion of this character. The present emergency is creating many rapid changes in the international air map and in the duties and responsibilities placed upon United States air carriers engaged in foreign air transportation. The complete withdrawal of American passenger steamship [fol. 5082] service between the United States and the South American countries served by Panagra, places the burden upon Panagra of maintaining vital communication between the countries on its route and between them and the United States, so essential for defense and hemispheric solidarity. The effectiveness of Panagra's service in the national defense is necessarily prejudiced by the power of Pan American through the exercise of its negative control of Panagra to tie Panagra's hands and prevent it from taking any action whatsoever, even to submitting the matter to the Civil Aeronautics Board, which Pan American may deem adverse to its own interests. Even now, while Panagra is precluded by Pan American from proceeding in its own behalf to request authorization from the Civil Aeronautics Board to institute through service to the United States, various events are occurring which constitute actual and potential inroads and threats to the territory pioneered and developed by Panagra. Other air carriers are extending or are about to extend their operations into Mexico, Central America and the Caribbean areas. What steps those carriers will take to extend their services into and in the territory served by Panagra has not as yet been fully revealed. Pan American itself, while barring Panagra from applying for any service between the Canal Zone and the United States, is rapidly expanding its own service in this area and may at any time press for early integra-

tion of its proposed service over the New Orleans-Canal Zone route. The present situation whereby Panagra, solely as the result of the exercise of Pan American's negative control of its actions, must stand by helpless and watch other air carriers moving into and strengthening their position in an area where Panagra should be operating to complete its own service, is prejudicial to the interests of Panagra, to the public interest and to the national defense.

Respectfully submitted,

W. R. GRACE & Co.

By .....
D. S. Iglehart,
President

Dated April 27, 1942.

[fol. 5083]

VERIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

D. S. Iglehart, being duly sworn, deposes and says: That he is President of W. R. Grace & Co.; that he has read and is familiar with the contents of the foregoing Statement of Facts; that he intends and desires that the Board shall place complete and full reliance upon the accuracy of each and every statement contained therein; that he is familiar with the facts therein set forth and, to the best of his information and belief, every statement contained in said Statement of Facts is true and no such statement is misleading.

.....
D. S. Iglehart, President

Subscribed in my presence and sworn to before me by the affiant above-named, this ... days of April, 1942.

.....
Notary Public

My Commission expires .....

[fol. 5084]

W. R. GRACE AND COMPANY EXHIBIT 137

CIVIL AERONAUTICS BOARD
WASHINGTON

(Emblem)

[Handwritten notations— Panair Matter— file HB]

[Stamp— Jun 26 1942]

Mr. D. S. Iglehart, President
W. R. Grace & Co.
7 Hanover Square
New York, New York

Re: Docket No. 744

Dear Mr. Iglehart:

On April 29, 1942, W. R. Grace & Co. filed with the Civil Aeronautics Board a letter and an accompanying statement of the facts in which it alleged that certain actions of Pan American Airways Corporation with respect to Pan American-Grace Airways, Inc., had violated section 411 of the Civil Aeronautics Act of 1938 and section 7 of the Clayton Act. W. R. Grace & Co. requested that the Board order Pan American Airways Corporation to cease and desist from the matters complained of and require Pan American Airways Corporation "to divest itself of its ownership of the stock in Pan American-Grace Airways, Inc., to such an extent as may be necessary to divest itself of its present negative control of Pan American-Grace Airways, Inc."

Upon consideration of this matter the Board has decided to undertake an investigation for the purpose of securing all the facts relevant to the matters complained of by W. R. Grace & Co. This investigation will be entirely informal and will not involve a hearing. Moreover, it should be pointed out that the undertaking of the investigation referred to does not imply that a complaint has been issued against Pan American Airways Corporation

under either section 411 of the Civil Aeronautics Aeronautics Act or sections 7 and 11 of the Clayton Act. Rather, this investigation is for the purpose of determining whether such a complaint should be issued. In the event the Board decides to issue a complaint pursuant to section 411 of the Civil Aeronautics Act or sections 7 and 11 of the Clayton Act, Pan American Airways Corporation will, of course, be given an opportunity to file an answer and a [fol. 5085] public hearing will be held before an examiner of the Board.

An identical letter is today being sent to Mr. Juan T. Trippe, President of Pan American Airways Corporation.

Very truly yours,

/s L. W. Pogue
L. W. Pogue
Chairman

Copy to: Whiteford, Hart & Carmody

[fol. 5087]

W. R. Grace and Company Exhibit 138

[Handwritten notation—10 26 42]

BEFORE THE CIVIL AERONAUTICS BOARD

Docket No. 779

In the matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

Pan American-Grace Airways, Inc.

under Section 401(h) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminal in the United States.

ANSWER OF PAN AMERICAN AIRWAYS, INC. AND PAN AMERICAN AIRWAYS CORPORATION AND PETITION OF PAN AMERICAN AIRWAYS CORPORATION FOR AN INVESTIGATION UNDER SECTION 415 OF THE CIVIL AERONAUTICS ACT

Now come PAN AMERICAN AIRWAYS, INC. (hereinafter referred to as "Pan American Airways") and PAN AMERICAN AIRWAYS CORPORATION, (hereinafter referred to as "Pan American"), and respectfully show to the Board as follows:

1. *Description of the parties.*

Pan American Airways is a corporation organized and existing under the laws of the State of New York. All of its stock is, and at all times hereinafter referred to, has been owned by Pan American. It is a party to this proceeding by virtue of the Board's order of September 10, 1942.

Pan American is a corporation organized and existing under the laws of the State of Delaware. It owns, and from the date of organization of Pan American-Grace Airways, Inc. has owned, 50% of the capital stock of Pan American Grace Airways, Inc. As such owner, it has an important interest in this proceeding and has filed a petition for leave to intervene herein.

[fol. 5088]

2. *Reasons for filing this answer and petition at this time:*

Pan American has refrained for many months from answering the petition and complaint filed by W. R. Grace & Co. (hereinafter referred to as "Grace") under date of December 16, 1941 (Docket No. 707), and the letter and so-called "Statement of Facts" filed by Grace under date of April 27, 1942 (Docket No. 744). It has done this because a public controversy at this time between Grace and Pan American, the two largest American transportation enterprises serving Latin America, did not appear to be in the interests of the war effort, and also because the Civil Aeronautics Board's statement of policy of Decem-

However, Pan American's directors consider that the initiation of this proceeding, which raises, among other questions, the issue of surface carriers being allowed to dominate air transportation, makes it impossible for Pan American longer to remain silent, and requires that Pan American shall set forth the facts as to the organization and history of Pan American Grace Airways and other relevant matters. Pan American believes that these facts show, not only that the extension of the certificate of Pan American Grace Airways which is sought by Grace would not be proper, even if the Board had the power to order such an extension, but also that the Board should take affirmative action to free Pan American Grace Airways from the handicap of domination and control of its steamship competitor, the Grace Line.

[fol. 5089]

3. *The formation of Pan American Grace Airways (1928-1929).*

Grace's petition in Docket No. 707 and its letter and so-called "Statement of Facts" in Docket No. 744 wholly omit reference to the fact that the capital invested in Pan American Grace Airways, Inc. by its founders was not dedicated to the performance of air transportation service generally, but rather to the operation of air transport services in a delimited territory. The capital invested in Pan American Grace definitely was not dedicated to the purpose of engaging in air transportation between the United States and the Canal Zone. On the contrary, Pan American-Grace was organized as a joint venture on the part of its two founders *for the limited purpose of conducting a route in air transportation on the west coast of South America.* The capital invested in it was devoted to that purpose and to that purpose alone.

Instead of Pan American being guilty of an attempt to "suppress" or "restrict" Pan American Grace Airways, as alleged by Grace, the facts are that Grace has been engaged for the past four years in attempted repudiation of the very basis on which it was permitted to participate

(2) A Grace director was to be elected President of Pan American-Grace "and placed in responsible charge of the management of the Company." However, technical, traffic and other services were to be rendered to Pan American-Grace by Pan American Airways as heretofore.

(3) Any dispute as to any phase of the plan was to be referred to arbitration.

Since the making of this 1939 agreement, Pan American-Grace has continued generally to be operated, from technical and traffic standpoints, as a part of the Pan American Airways System. However, although the mileage of the Company has been considerably expanded, largely at the instance of various agencies of Government, Grace has continued the same policies which have been previously reviewed. As a result, Pan American-Grace is still not rendering the service to the west coast of South America which it ought to render in the public interest.

The Civil Aeronautics Board has recently had occasion to fix new rates of mail pay both for Pan American-Grace and for Pan American Airways' other operations in Latin America. It found that, in order to break even and make a [fol. 5098] reasonable return on its investment, Pan American-Grace required a payment of 50.7 cents per revenue mile. On the same basis, Pan American Airways required a payment of only 17.83 cents, or slightly more than *one-third* as much. There is no substantial difference in the operating conditions of the two carriers,—certainly none sufficient to account for this wide discrepancy in operating results. This difference of 32.94 cents per mile in mail pay, as applied to Pan American-Grace's annual mileage, means an extra cost of considerably over a million dollars a year to the taxpayer.

6. *The adequacy of Pan American Airways' connecting service between the Canal Zone and the United States.*

While Grace has taken full advantage of the provisions in the 1939 settlement which were favorable to it, Grace repudiated almost immediately the provisions of the con-

tract whereby the two owners of Pan American-Grace agreed that the basic understandings with respect to the scope of the operations of Pan American-Grace were not to be disturbed unless Pan American Airways failed to supply adequate connecting service between the Canal Zone and the United States.

From the outset Pan American Airways has recognized its obligation, which accords directly with its interests, to furnish adequate connecting service to Pan American-Grace. As early as 1930, it had taken the initiative in straightening the then circuitous route between Miami and the Canal Zone, inaugurating for the purpose what were the longest over-water flights in the world. For many years it had operated four-engined service to the Canal, in addition to service on the routes through Central America and via Barranquilla connecting with the twin-engined service which Pan American-Grace has offered to the south.

After the conclusion of the 1939 agreement, Pan American Airways fully complied with both the letter and the spirit [fol. 5099] of its provisions with respect to connecting service.

Pan American Airways promptly inaugurated the "second direct trip" referred to in the agreement, thus affording two direct four-engined connections with Pan American-Grace's two twin-engined trips south of the Canal. After Pan American Airways obtained delivery of the four-engined Stratoclipper B-307 planes in 1940, it placed them in service on the Miami-Canal Zone route, operating three schedules a week, two of them without mail pay, to connect with Pan American-Grace's twin-engined schedules operating over the Canal Zone-Guayaquil bottleneck. The frequency of this service has been constantly expanded. Daily service has been afforded since April, 1942. Improved utilization of equipment, resulting from substitution of DC-3A for marine equipment, has recently permitted Pan American Airways further to improve its service by concentrating the B-307 equipment on the trans-Caribbean route to the Canal Zone. Pan American Airways' daily capacity from the United States into the Canal Zone is now

directors in some instances to prevent the development of the services of Pan American-Grace in a manner that would injure Grace's steamship business. As air transportation has developed from principally an airmail service to large-scale passenger and express operation, this conflict of interest between the west coast airline and the Grace Steamship Line serving the same territory has become more and more evident. In normal times, almost every passenger carried by Pan American-Grace between the Canal and Santiago, who flies through or local, is a passenger lost to the Grace Line, and almost every connecting through passenger carried by Pan American between the United States and the Canal is likewise a passenger lost to Grace.

(a) *Flight Equipment.*

The conflict began on the issue of flight equipment. Pan American urged from the outset that Pan American-Grace should keep pace in the quality of its flight equipment with other services of the Pan American Airways System in Latin America. Grace took quite a different view, at one time actually using its negative control over Pan American-Grace to continue the operation of single-engined equipment on a section of the west coast trunk line to Buenos Aires. The results of these policies of Grace are shown by the fact that although Pan American Airways has had four-engined marine equipment in operation in Latin America since 1931, and four-engined land equipment since 1940, [fol. 5094] Pan American-Grace today still has none.

(b) *Ground Facilities.*

A similar policy was followed by Grace with reference to ground facilities. Pan American pressed from the outset for the installation by Pan American-Grace along the west coast of South America of ground facilities equivalent to those provided on other sections of Pan American Airways' routes in Latin America. This was resisted by Grace. Even today investment in ground facilities per route mile on the route of Pan American-Grace is very considerably less than that on Pan American Airways' routes in Latin America.

Grace has exercised its negative control over Pan American Grace particularly to postpone the installation of adequate passenger facilities on the west coast route. Grace's attitude toward the airline's passenger facilities has been in marked contrast to its provision of luxurious facilities for steamship passengers on the west coast. At the very time when Grace was contending in favor of continued use of single-motored equipment on the west coast air route and was opposing passenger facilities which it described as "mere conveniences and luxuries," it was advertising the first of a fleet of "sparkling new Santa Lucias," which offered "all outside staterooms" and "dancing under the moon." The recently existing situation is described in Pan American Grace's submission to the Civil Aeronautics Board in its rate case, extracts from which are set forth in Exhibit B hereto attached. Throughout all these years there has been no single instance in which a Pan American director has opposed the improvement of facilities by Pan American Grace.

[fol. 5095] (c) *The Canal Zone-Guayaquil sector.*

From a public interest standpoint, perhaps the most serious instance of Grace's use of its negative control over Pan American Grace has been its attitude with respect to the northernmost sector of Pan American Grace's route between the Canal Zone and Guayaquil.

The Canal Zone and Guayaquil are located almost on the same meridian, 775 miles apart. Over this section of Pan American Grace's operation must move not only the traffic for points within it, but also the through traffic to Peru, Chile, Bolivia and the Argentine. Every consideration of transportation economies calls for the provision of maximum speed and capacity on this sector.

Four-engined equipment capable of flying the great circle course from the Canal Zone to Guayaquil with high payload capacity has been available at least since 1950. Pan American urged that Pan American Grace operate the direct route and, to that end, offered to charter to Pan American Grace on any fair basis four-engined equipment owned by Pan American Airways. Grace insisted, however,

Grace was to have an option to acquire an interest in the company to be organized for the purpose, "not to exceed, however, more than fifty percent of the total capitalization." The proposal further stipulated that Pan American Airways was to "have charge of the operation of the service [fol. 5461] from the Canal to Valparaiso," while the Grace "houses on the West Coast of South America will be the agents of the Company." A copy of this letter of August 31, 1928, which constituted the basis for Grace's participation in the west coast airline, is attached as Exhibit A.

Pursuant to this agreement, Grace acquired 50% of the stock of Peruvian Airways Corporation. That company, under the same management as the predecessor company which had been active in Peru, instituted transport operations in Peru and also secured the necessary operating rights in Ecuador.

Pan American Airways initiated its services to the Canal early in 1929. On January 31, 1929, the Post Office Department advertised to bids for the carriage of foreign airmail on route No. 9. Pursuant to the agreement of August, 1928, Pan American Grace Airways was organized to bid for this contract, Grace exercising its option to acquire a 50% interest in that company. Pan American Grace became the successful bidder.

The new enterprise formed in accordance with the 1928 agreement was in no way competitive with any activity of Pan American Airways. It simply constituted a logical extension of Pan American Airways' route to the Canal, an extension on which Pan American Airways was already well embarked before its negotiations with Grace. On the other hand, Grace acquired a 50% stock interest in an airline *directly competitive* with its steamship lines. Upon such a state of facts, it is surprising, indeed, to find Grace now making the claim that the acquisition of stock in Pan American Grace by *Pan American* was a violation of the anti-trust laws.

With the consent of the two stockholders the scope of operation of Pan American Grace was later extended to Buenos Aires.

[fol. 5092] The 1928 agreement clearly contemplated that Pan American Grace was to be operated and developed by Pan American Airways as an integral part of the general system of air transportation which it was inaugurating between the United States and South America, and that Grace's position was to be that of an investor and the Company's agent on the west coast. This was a natural agreement for Pan American to demand. Pan American was an aviation enterprise. It knew air transportation, how to conduct and to develop it. Its interests were, and are, wholly in that field. Grace, being the steamship operator on the west coast, it was natural and proper for Pan American to insist that Grace should not exercise managerial control over Pan American Grace.

4. *Grace's negative control over Pan American Grace (1929-1937).*

Many of the provisions of the 1928 agreement with respect to the management of Pan American Grace have been carried out as was originally intended. On the technical side the Company has been operated generally as a part of the Pan American Airways System. Operations and maintenance procedures and standards have been made available to Pan American Grace in the same way as to the divisions of Pan American Airways. Pan American Airways' traffic department has laid down ticketing and tariff procedures and regulations for the handling of passengers, goods and mail, and has acted as sales agent for Pan American Grace in the United States, in the same way as for wholly owned operations of Pan American. Pan American Airways' purchasing department has handled procurement problems of Pan American Grace along with those of the various Pan American divisions. Even Pan American Grace's insignia conforms to the System insignia except for the addition of the word "Grace."

[fol. 5093] It was not long, however, before it appeared that Grace did not intend fully to live up to the provisions of the 1928 agreement, whereby Pan American was to "have charge of the operation of the service" of Pan American Grace, but rather would use its position on the board of

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that Pan American-Grace's operations between the Canal Zone and Guayaquil should be conducted instead by twin-engined equipment over a circuitous route, crossing and recrossing mountain ranges at an altitude of 12,000 feet, via Cali, Colombia, where the aircraft remain overnight.

The results of this course of action, in which Pan American yielded to the insistence of Grace over its own better judgment, have been as follows:

(1) The flight from the Canal to Guayaquil is over a mountainous route 985 miles by the "shortest practicable airway distance" as set forth in the recent mail rate decision of the Civil Aeronautics Board, as against 775 miles by the direct over-water route, which has been feasible at least for five years. Every through passenger to Guayaquil or beyond suffers this 200 mile penalty.

(2) Operation over the Cali route means that passengers from the United States do not reach Guayaquil [fol. 5096] and Lima until the second day, whereas operation over the direct route, with proper scheduling, would permit a one day service as far south as Lima, with attendant saving in time to and from points beyond.

(3) As against the large capacity which four-engined aircraft would have over this sector, Pan American-Grace's 21-passenger airplanes have at times been able to carry only 12 or 13 passengers from the Canal through this bottleneck, and load factors on this sector consistently exceeded 90% even when Pan American was operating into the Canal Zone only one flight daily directly from Miami and one flight daily through Central America.

As a result of long experience with these difficulties, Pan American Airways in 1941 again offered to charter to Pan American-Grace four-engined equipment for direct operation south of the Canal Zone (leaving Pan American-Grace's twin-engined equipment to give service via Cali) on any fair basis which the Civil Aeronautics Board might

approves. Pan American-Airways' offer contemplated an interchange of equipment so as to permit the through operation of four-engined land aircraft between Miami and Guayaquil, following the same general lines as the mutual change of equipment between United Air Lines and Western Air Express which the Civil Aeronautics Authority had approved a year before (1 C.A.A. 729). The plan comprehended not only the immediate operation of Pan American Airways' four-engined land equipment through to Guayaquil or Lima, but also, when and if Pan American-Grace itself acquired four-engined aircraft (three of which were then on order), the operation of such aircraft over Pan American Airways' route between the Canal Zone and the United States. These offers were again declined by Grace.

"5. *Grace's attempts to acquire position of control of Pan American-Grace (1938-1942).*

In the fall of 1938 Grace commenced its repudiation of the basis on which it had acquired its interest in Pan American-Grace by demanding that the stipulated scope of operation, to which the capital invested in the joint company had [fol. 5097] been dedicated, should be expanded to include service between the United States and the Canal Zone, and that management of the enterprise should be turned over to Grace.

Pan American realized that Grace had neither the legal nor the moral right to make these demands. It desired, however, to attempt to live in harmony with its partner, and early in 1939 it consented to a compromise adjustment, which was to extend for five years. The principal provisions of this agreement, which were set forth in a memorandum of February 14, 1939, were as follows:

> "(1) Grace's demand that the 1928 agreement be disregarded so as to permit Pan American-Grace to apply for a certificate between the Canal Zone and the United States was withdrawn, the only exception being that if Pan American Airways should fail to maintain an adequate direct connecting service," Pan American would take proper action to permit the application to be made.

Pan American therefore requests that the Board institute an inquiry, pursuant to Section 415 of the Civil Aeronautics Act, into the management of the business of Pan American-Grace Airways, Inc. and the facts and circumstances set forth in this answer, and that upon making such inquiry the Board should make such order with respect to termination of the control of Pan American-Grace Airways, Inc. by Grace as is required by the Civil Aeronautics Act and such other laws as may be applicable in the premises. If, as a result of such inquiry, the Board should conclude that Grace should be required to divest itself of part or all of its stock in Pan American-Grace, Pan American reaffirms its offer, previously made to Grace, to acquire such stock, and to do so on such terms and conditions as the Board may determine.

Dated, October 26, 1942.

Respectfully submitted.

PAN AMERICAN AIRWAYS, INC.

By EVAN E. YOUNG
Evan E. Young,
Vice-President

PAN AMERICAN AIRWAYS CORPORATION.

By EVAN E. YOUNG,
Evan E. Young,
Vice-President

[fol. 5105]

STATE OF NEW YORK,)
: ss.:
COUNTY OF NEW YORK,)

EVAN E. YOUNG, being duly sworn, deposes and says: that he is Vice President of Pan American Airways, Inc. and Pan American Airways Corporation, the answering parties and petitioners herein; that he has read and is familiar with the contents of the foregoing answer and petition and the attached exhibits; that he intends and

desires that in consideration of said answer and in acting upon said petition, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; and that, to the best of his information and belief, every statement contained in the said answer and petition is true and that no such statement is misleading.

Evan E. Young
(Evan E. Young)

Subscribed and sworn to
before me, a Notary Public in
and for the County of New
York, and state of New York,
this 26th day of October, 1942.

Ethel M. Wilson
Notary Public

NOTARY PUBLIC, Kings County
Kings County Clk's No. 284
Kings County Reg's No. 3015
New York County Clk's No. 55
New York County Reg's No. 3-W250
Commission Expires March 30, 1943

[Notarial Seal]

[fol. 5106]

EXHIBIT A

W. R. GRACE & COMPANY

NEW YORK
August 31, 1928

Aviation Corporation of the Americas,
300 East 42nd Street,
New York City.

Attention: Mr. J. T. Trippe

Dear Sirs:

This will confirm a arrangement under which we will associate for the commencement of an airplane service in Peru

La Paz. "The present building at La Paz was constructed in 1937. Even prior to the inauguration of the Bolivian service to Corumba this passenger station was congested and generally inadequate."

Oruro. "There are no facilities at this point at the present time."

Uyuni. "Facilities at the airport are practically non existent, and no satisfactory hotel arrangements can be made in the nearby town. In the winter it becomes extremely cold at this point. The new facilities will provide arrangements to feed, sleep and warm passengers. At the present time, passengers must sleep either on the floor of a house owned by an Englishman who is interested in a local railroad operation or in the planes."

Cordoba. "At the present time the only passenger facilities at this point are a small portable building."

[fol. 5109]

W. R. GRACE AND COMPANY EXHIBIT 139

[Stamp—Office Copy—Docket [illegible]29/43 RWB—Diary Not entered FWB—In Charge FJK]

BEFORE THE
CIVIL AERONAUTICS BOARD

Docket No. 744

In the matter of the informal investigation instituted by the Board to determine whether or not a complaint should be issued with respect to the acquisition of the stock of Pan American-Grace Airways, Inc.

ANSWER OF PAN AMERICAN AIRWAYS CORPORATION AND PETITION FOR AN ORDER REQUIRING W. R. GRACE & CO. TO DIVEST ITSELF OF THE STOCK INTEREST HELD BY IT IN PAN AMERICAN-GRACE AIRWAYS, INC., PURSUANT TO SECTIONS 7 AND 11 OF THE CLAYTON ACT

Communications with respect to this Answer and Petition should be sent to the following:

John C. Cooper, Vice President and
Assistant to President,
Pan American Airways Corporation,
135 East 42d St.,
New York City, N. Y.

and

Root, Clark, Buckner & Ballantine,
31 Nassau St.,
New York City, N. Y.

[fol. 5110]

BEFORE THE
CIVIL AERONAUTICS BOARD

Docket No. 744

In the matter of the informal investigation instituted by the Board to determine whether or not a complaint should be issued with respect to the acquisition of the stock of Pan American-Grace Airways, Inc.

ANSWER OF PAN AMERICAN AIRWAYS CORPORATION AND PETITION FOR AN ORDER REQUIRING W. R. GRACE & CO. TO DIVEST ITSELF OF THE STOCK INTEREST HELD BY IT IN PAN AMERICAN-GRACE AIRWAYS, INC., PURSUANT TO SECTIONS 7 AND 11 OF THE CLAYTON ACT

Now comes PAN AMERICAN AIRWAYS CORPORATION and for its answer to the letter and so called "Statement of Facts" of W. R. Grace & Co. dated April 27, 1943 and for its petition for an order requiring said W. R. Grace & Co. to divest itself of the stock interest held by said W. R. Grace & Co. in Pan American Grace Airways, Inc., respectfully shows to the Board as follows:

a concession for air transport operations and a contract for the carriage of air mail in that country. Pan American had an option on this concession and air mail contract, and had drawn plans for the organization of a subsidiary for the purpose of receiving a formal assignment.

At that time, for all practical purposes, the only transportation facilities connecting the countries on the West Coast of South America with each other and with the United States were the steamships of Grace. This monopoly of transportation, however, was only one phase of the dominating position over trade and commerce between the countries on the West Coast of South America and between those countries and the United States which Grace had built up over many years. Grace was at that time, as it is today, an organization of tremendous financial strength, tied in to nearly every phase of transportation and commerce between the countries on the West Coast of South America and between those countries and the United States, and with large interests in industry and in banking as well.

A. Grace's acquisition of stock in a competing transportation corporation.

When Grace learned of Pan American's plan to inaugurate an air service down the West Coast of South America which would compete directly with the steamers of the Grace Line serving those countries, Grace determined to seek to acquire a stake in this new and competitive form of transportation. Pan American, with its then limited available financial resources, was willing to offer a participation to Grace, under certain terms and conditions which Pan American believed at the time would safeguard the West Coast airline against domination in the interest of its steamship competitor.

The result of the negotiations between the two companies [fol. 5114] was embodied in a formal proposal dated August 31, 1928 that each company should invest $25,000 in a Corporation (Peruvian Airways Corporation) "for the commencement of an airplane service in Peru." If Pan American should determine that it was advisable "to bid on a contract for carrying the mails between the Panama Canal

and Valparaiso". Grace was to have an option to acquire an interest in the company to be organized for that purpose, "not to exceed, however, more than 50% of the total capitalization." The proposal further stipulated that Pan American was to "have charge of the operation of the service from the Canal to Valparaiso" while the Grace "houses on the West Coast of South America will be the agents of the Company." A copy of this letter of August 31, 1928, which constituted the basis for Grace's participation in the West Coast airline, is attached as Exhibit A.

Pursuant to this agreement, Grace acquired 50% of the stock of Peruvian Airways Corporation. The vice president of the company associated with Pan American which Peruvian succeeded became general manager of Peruvian. That company instituted transport operations in Peru and also secured the necessary operating rights in Ecuador.

Pan American began its services to the Canal early in 1929. On January 31, 1929, the Post Office Department advertised for bids for the carriage of foreign air mail on route No. 9. Pursuant to the agreement of August, 1928, Pan American-Grace was organized to bid for this contract and Grace exercised its option to acquire a 50% interest in that company. Pan American-Grace became the successful bidder.

These facts clearly demonstrate that Pan American-Grace was a direct descendant of the company associated with Pan American which was negotiating in Peru as early [fol. 5115] as 1927, and undertook a business which Pan American had been planning for many months to undertake for its own sole account. This new enterprise was in no way competitive with any activity of Pan American. Thus there could not be any substantial lessening of competition with Pan American or tendency toward monopoly which are required to constitute a violation of Section 7 of the Clayton Act. The new operation was to be simply a logical extension of Pan American's route to the Canal. Section 7 of the Clayton Act expressly exempts transactions in which corporations engaged in "commerce" cause "the formation of subsidiary corporations for the actual

approximately four times Pan American-Grace's capacity south of the Zone.

Immediately after delivery of the Stratoclippers, Pan American took the next step to improve its services, ordering a fleet of 40 Lockheed Constellation four-engined aircraft, the longest range and highest speed transport aircraft and the largest land type transports planned up to that time, and far superior to anything that Grace has ever proposed for Pan American-Grace. Except for military factors beyond Pan American's control, Pan American would now be operating with these planes a number of scheduled flights each day between the United States and the Canal Zone.

The facts which stand out from this history are (1) that Pan American-Grace is receiving a direct connecting service between Miami and the Canal Zone operated by the [fol. 5100] only American flag four-engined land aircraft now in commercial operation anywhere in the world; (2) that Pan American-Grace is not in a position to supply connecting service anything like the equivalent of what it now receives; and (3) that Pan American Airways' record demonstrates that when four-engined equipment again becomes available for purchase by the airlines, the United States-Canal Zone route will receive all the service that could be justified.

7. *The claim that extension of Pan American-Grace's certificate is desirable in the national defense.*

Grace's submissions to the Board contain vague and unsupported assertions that an extension of Pan American-Grace's route would contribute to the national defense. Not a single fact is cited in support. The fact is that Pan American has whole-heartedly encouraged the undertaking by Pan American-Grace of services for the armed forces, *regardless of territory*, and has placed at the disposal of Pan American-Grace its own maintenance, operations, communications and meteorological facilities throughout the area to be served. Pan American has also stated that it would favor Pan American-Grace's offering to undertake

additional service for the armed forces to the full extent that available personnel, over and above those required for the maintenance of essential service on Pan American-Grace's own route, will permit.

8. *The interests of Pan American-Grace and the public interest.*

Pan American believes that the primary duties of Pan American-Grace Airways under present circumstances are the improvement of service upon the important route which it was formed to operate, and, to the extent of any additional available resources, the rendition of service for the armed forces. Apart from this, Pan American considers [fol. 5101] that an extension of the certificate of Pan American-Grace to a terminal in the United States would be contrary not only to the public interest but to the true interests of Pan American-Grace.

From the standpoint of the public interest, such an extension of Pan American-Grace's certificate under its present ownership would be directly contrary to the statement of fundamental policy laid down by the Board in its opinion dated July 29, 1942 in Docket No. 544. The Board there held that the organization of a new company, half owned by steamship interests and half owned by an airline, to operate over a route competitive with both the airline and one of the steamship owners, would be contrary to the public interest. Pan American-Grace is now an integral part of the Pan American Airways System, and, with its present operations, there is no inconsistency of interest between it and Pan American. On the other hand, extension of its certificate to a terminal in the United States would bring the case directly within the purview of the Board's decision. If the *organization* of a company owned jointly by an airline and a steamship company to operate in competition with both of them is contrary to the policy of the Act, an *extension* of the operations of an existing company so as to create the same conditions must be equally contrary to the public interest.

The question here presented is not, as Grace seeks to represent, the broad question whether Pan American Air-

ways, in addition to foreign flag competition, should have American flag competitors in the Caribbean. The Government is in a position to permit American flag competition whenever it sees fit. The issue here is whether the Board should, or can, force the west coast unit of the Pan American Airways System itself—a company which Pan American created as an extension of its operations to the Canal to serve the west coast, and in which more than two mil- [fol. 5102] lion dollars of its stockholders' money are invested—into competition with Pan American itself.

Actually, it cannot be seriously supposed that if the Board were to select a competitor for Pan American Airways in the Caribbean area, its choice would fall upon a company half owned by Pan American and constituting an integral part of the Pan American Airways System. When Grace speaks of Pan American-Grace becoming a competitor of Pan American Airways, it therefore impliedly assumes that Pan American will part, either voluntarily or under compulsion, with its interests in Pan American-Grace—leaving that company under the domination of Grace.

This case is, therefore, an attempt by a great shipping company to take over its airline competitor. But it is more than this. It is also an attempt by a closely held private holding company, which for nearly a century has exercised domination over transportation and commerce between the United States and the west coast of South America, to oust the one outside American interest that has attempted to engage in transportation in this area dominated by Grace. In this connection it is pertinent to inquire why if Grace wishes to compete in air transportation with the Pan American Airways System, it has not applied for a certificate on its own behalf. This, of course, it has been and is entirely free to do. Indeed, in the spring of 1941, it organized a subsidiary known as Gulf & Caribbean Airways, Inc. for that very purpose, and announced that a certificate application to operate between the United States and the Canal Zone would shortly be filed by that company.

The question here presented is thus not simply whether creation at the present time of a competitive American flag

airline between the United States and the Canal Zone is a wise policy, but whether, if there is to be competition, it should be furnished by an airline controlled by a company [fol. 5103] which not only is the airline's steamship competitor but also dominates other forms of trade and commerce with the area in question. Such a course not only would run counter to the general policy outlined by the Board in the *American Export* case, Docket No. 319, but would solidify the control of Grace over transportation and trade between the United States and our sister republics on the west coast of South America.

9. *Affirmative steps to be taken by the Board.*

We believe that the Board's duties here go beyond a merely negative disposition of this proceeding.

Pan American has been forced to the conclusion that the west coast airline in South America will never be developed as it should be, so long as either positive or negative control of Pan American-Grace rests in the hands of its steamship competitor. This control would be even more detrimental to the public interest in the future, as air transportation develops and becomes a strong competitor of steamship lines.

Some months ago Pan American offered to Grace that, in order to eliminate any question as to the Company's discharging its responsibilities in the war effort, the parties should name a ninth director of Pan American-Grace for the duration of the emergency, who would have power to break any deadlock on any questions arising in connection with operations of the Company that fall within the scope of the dedication of capital made by the two stockholders. Pan American reiterates this offer. It would be Pan American's hope that, as a result of such a course, Pan American-Grace not only would make improvements in facilities and service on its own route but also would undertake further services for the Army Air Forces. Equally important, the election of a ninth director would permit the making of equipment interchange agreements with Pan American Airways for through service, in such form as the Civil [fol. 5104] Aeronautics Board may approve.

1. *Description of the companies concerned:*

Pan American Airways Corporation is a corporation organized and existing under the laws of the State of Delaware. Pan American Airways Corporation owns all of the issued and outstanding capital stock of Pan American Airways, Inc., a corporation organized under the laws of the State of New York,* and half of the issue and outstanding capital stock of Pan American-Grace Airways, Inc.

Pan American-Grace Airways, Inc. (hereinafter referred to as Pan American-Grace) is a corporation organized under the laws of the State of Delaware.

[fol. 5111] W. R. Grace & Co. (hereinafter referred to as Grace) is a corporation organized and existing under the laws of the State of Connecticut. Grace owns the other half of the stock of Pan American-Grace.

2. *Reasons for filing this answer and petition.*

Since the order of the Civil Aeronautics Board dated September 10, 1942 (Serial No. 1928) instituting the proceeding designated Docket 779, Pan American has considered that, in line with the indication in paragraph 6 of the recital preceding said order, the general charges made by Grace in its complaint in Docket 744 would be considered in Docket 779. Pan American, under date of October 26, 1942, filed a formal answer and petition in Docket 779 which refuted the allegations contained in the letter and so-called "Statement of Facts" filed by Grace herein, and asked for certain affirmative action by the Board under Section 415 of the Act.

However, in view of doubts which have recently been expressed as to the scope of the issues presented in Docket 779, and also in view of the need that the Board's inquiry into violation of the Clayton Act should apply to Grace, Pan American feels obliged to set forth in this separate answer and petition the true facts bearing on the issues posed by Grace's letter and so-called "Statement of Facts."

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*As used herein, "Pan American" means Pan American Airways Corporation and or Pan American Airways, Inc., as well as predecessor corporations of either.

These facts demonstrate not only that Grace's complaint against Pan American is wholly without legal basis, but also that, if the Clayton Act is applicable, Grace has violated Section 7 of that Act by its acquisition of stock in Pan American Grace, and that the Board should exercise its power under Section 11 of said Act and order Grace to divest itself of the interest so acquired.

[fol. 5112]

3. *The transportation facilities in Latin America at the time of the formation of Pan American-Grace.*

Any inquiry as to whether the acquisition of stock in Pan American Grace constituted a violation of the Clayton Act must begin by a consideration of the situation existing when the acquisition occurred. It is fundamental, of course, that any violation of Section 7 of the Clayton Act occurs at the time when the stock is acquired.

Prior to the fall of 1927 transportation between the countries of Latin America and between those countries and the United States was primarily by steamship. With a few outstanding exceptions not here material, rail transportation was a negligible factor in international transportation. No American flag air transportation company had entered the Latin American field.

In July, 1927, Pan American was awarded a United States mail contract between Key West and Cuba and began operations on that route in October of the same year. This route was considered simply as a laboratory for a complete system of air transportation serving all portions of the Caribbean, and Central and South America. During 1927 and early 1928, Pan American made studies of a proposed air route from the Canal to Valparaiso, and through an associated company, began negotiations for concessions and mail contracts on the West Coast of South America.

By the summer of 1928, Pan American had become the United States foreign air mail contractor between the United States and the Canal Zone. Plans for extension of this operation to the south were well advanced. A company associated with Pan American had begun certain commer-
[fol. 5113] cial aviation activities in Peru and had obtained

with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that Company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U. S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such agency to continue during the life of transportation contracts undertaken by the company.

The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. GRACE & Co.

William F. Cogswell
Assistant Secretary

[fol. 5107]

EXHIBIT B

Extracts from Description of Passenger Facilities in Statement of Evidence submitted by Pan American-Grace Airways, Inc. to the Civil Aeronautics Board in Docket No. 716 (pp. 290-295)

Cali. "The present passenger facilities at Cali are practically non existent."

Talara. "This passenger station was built at a time when Panagra was operating aircraft having a maximum capacity of 12 passengers and has not been enlarged since that time in spite of fact larger planes are of course now in use."

Arica. "At the present time there is no passenger station at Arica. Passengers are handled from an office in the corner of the hangar."

Antofagasta. "Present passenger facilities at Antofagasta are wholly inadequate."

Mendoza. "At this point it will be practically necessary to construct an entirely new building. The present building is a small structure which is rented from the Aero Club. Traffic at Mendoza has steadily increased and the facilities are inadequate. This is particularly noticeable in the wintertime, when, because of conditions over the Andes, it is necessary for planes to stop overnight at Mendoza. On such occasions there is literally inadequate space to bring all passengers under cover, and the entire arrangements are such that passengers are subject to great inconveniences."

(3) Any dispute as to any phase of the plan was to be referred to arbitration.

Pan American fulfilled its obligations under the 1939 agreement completely, and there was comparative peace between the partners for a short period while Grace consolidated its gains. By the fall of 1939, however, war had broken out in Europe, and the American defense program [fol. 5120] was under way. Tremendous burdens were placed on all transportation facilities, particularly on Pan American's route between the United States and the Canal, and Grace was quick to seize upon this temporary emergency condition to raise the old cry that the connecting service to the Canal was inadequate and that Pan American was now bound to consent to Pan American-Grace's extension to the United States. Pan American offered to arbitrate this question as provided in the 1939 agreement, but Grace consistently refused. It seems clear that Grace has believed that if the extension of Pan American-Grace's route were compelled by the Board, Pan American, finding itself in the position of competing with its half-owned subsidiary between the United States and the Canal, would dispose of its interest in the subsidiary, presumably to Grace. In this way Grace's program for complete domination of transportation between the United States and the West Coast of South America would be fulfilled.

7. Conclusion

If, as contemplated by the original partnership agreement of 1928, Grace had been satisfied with its position as an investor in Pan American-Grace and as the airline's agent on the West Coast of South America, and had left the actual management and operation of the airline in the hands of Pan American, any adverse effects of the conflict of interest between Pan American-Grace and the Grace Line could have been prevented by Pan American, and the acquisition by Grace of stock of Pan American-Grace might not have resulted in substantial lessening of competition between the airline and the steamship line or tendency toward a monopoly. However, the succession of events out-

lined above, culminating in a move by Grace for an extension of Pan American-Grace's route to the United States, which can only be interpreted as an attempt to force Pan [fol. 5121] American to dispose of its interest in Pan American-Grace, leaving Grace in control of all forms of transportation between the United States and the West Coast of South America, makes it clear that Grace's acquisition of stock in Pan American-Grace must be invalidated as a violation of Section 7 of the Clayton Act (15 U. S. Code § 18).

Pan American has been forced to the conclusion that the West Coast airline in South America will never be developed as it should be, so long as either positive or negative control of Pan American-Grace rests in the hands of its steamship competitor. This control would be even more detrimental to the public interest in the future, as air transportation develops and becomes a strong competitor of steamship lines. The abuse by Grace of the power flowing from its ownership of stock in Pan American-Grace is exactly the kind of evil that Section 7 of the Clayton Act is designed to prevent.

Pan American respectfully requests that the Board issue a complaint against Grace under Section 11 of the Clayton Act (15 U. S. Code § 21) charging Grace with violation of Section 7 of said Act (15 U. S. Code § 18) by its acquisition of stock of Pan American-Grace and that after proper inquiry into the facts and circumstances, including those set forth in this answer and petition, an order be issued requiring Grace to divest itself of the stock so acquired.

Pan American also repeats the request made in its answer and petition of October 26, 1942 in Docket 779, that the Board institute an inquiry, pursuant to Section 415 of the Civil Aeronautics Act, into the management of the business of Pan American-Grace and that, upon making such inquiry, the Board should make such order with respect to termination of the control of Pan American-Grace by Grace as is [fol. 5122] required by the Civil Aeronautics Act and such other laws as may be applicable in the premises.

Pan American also reaffirms the offer made in its answer and petition of October 26, 1942 in Docket 779, that if the

Board concludes that Grace should be required to divest itself of part or all of its stock in Pan American-Grace, Pan American is willing to acquire this stock on such terms and conditions as the Board may determine.

Dated, January 27, 1943.

Respectfully submitted,

PAN AMERICAN AIRWAYS CORPORATION

By EVAN E. YOUNG
Evan E. Young,
Vice-President

[fol. 5123]

EXHIBIT A

W. R. GRACE & COMPANY

New York
August 31, 1928

Aviation Corporation of the Americas,
100 East 42nd Street,
New York City.

Attention: Mr. J. T. Trippe

Dear Sirs:

This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that Company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by

this company in Peru and every effort will be made to put the business there on a paying basis.

We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U. S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South American will be the agents of the company on a reasonable compensation basis, such agency to continue during the life of transportation contracts undertaken by the company.

The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. Grace & Co.

William Cogswell
Assistant Secretary

whether through or local, is a passenger lost to the Grace Line, and almost every connecting through passenger carried by Pan American between the United States and the Canal is likewise a passenger lost to Grace. The answer filed in Docket 779 shows in detail how Grace has used its negative control over Pan American-Grace to retard the acquisition of multi-engine flight equipment, to prevent the development of adequate ground facilities, to force Pan American-Grace into operation over a circuitous and mountainous "bottleneck" route between the Canal Zone and Guayaquil instead of developing the direct over-water route which has been feasible for at least five years, and to prevent Pan American-Grace from accepting offers of equipment charter and interchange which could only have [fol. 5118] been beneficial to the true interests of Pan American-Grace and the public interest.

6. *Grace's attempt to secure affirmative control of the transportation system competing with its steamship lines.*

The agitation for an extension of Pan American-Grace's route to the United States which has been consistently pressed by Grace since the fall of 1938, is another manifestation of Grace's general program to dominate this competing mode of transportation in its territory.

By the fall of 1938 the Grace interests had evidently determined that mere negative control of the airline, which was constantly becoming a more serious competitor of their steamship lines, was not enough. To secure affirmative control, however, Grace had to eliminate Pan American. Grace's actions during the past four years have been uniformly directed toward attainment of that end. The record compels the conclusion that Grace's insistence that Pan American-Grace's route be extended to the United States in direct competition with Pan American is simply one phase of its effort to force Pan American to dispose of its interest in Pan American-Grace, with Grace the only likely purchaser.

In line with this purpose, Grace demanded, in the fall of 1938, that the scope of operations of Pan American-Grace

contemplated by the 1928 agreement be expanded to include service between the United States and the Canal Zone, and that management of the enterprise should be turned over to Grace. The principal excuse offered in attempted justification for the demand that Pan American-Grace be extended to the United States was a claim that Pan American's connecting service between the United States and the Canal Zone was inadequate. A comparison of the services of Pan American to the Canal with those of Pan [fol. 5119] American-Grace south of the Canal shows the hollowness of this claim. From the very beginning Pan American has recognized its obligation, which accords directly with its interests, to furnish adequate connecting service to Pan American-Grace. The service of Pan American to the Canal has always been far superior to that of Pan American-Grace south of the Canal. At the present time, Pan American's daily capacity from the United States to the Canal Zone is approximately four times Pan American-Grace's capacity south of the Canal Zone.

Pan American realized that Grace had neither the legal nor the moral right to make these demands. It desired, however, to attempt to live in harmony with its partner, and early in 1939 it consented to a compromise adjustment, which was to extend for five years. The principal provisions of this agreement, which were set forth in a memorandum of February 14, 1939, were as follows:

(1) Grace's demand that the 1928 agreement be disregarded so as to permit Pan American-Grace to apply for a certificate between the Canal Zone and the United States was withdrawn, the only exception being that, if Pan American Airways should fail to "maintain an adequate direct connecting service", Pan American would take proper action to permit the application to be made.

(2) A Grace director was to be elected President of Pan American-Grace "and placed in responsible charge of the management of the Company." However, technical, traffic and other services were to be rendered to Pan American-Grace by Pan American Airways as heretofore.

[fol. 5127]

BEFORE THE CIVIL AERONAUTICS BOARD

Docket No. 779

In the matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

PAN AMERICAN-GRACE AIRWAYS, INC.

under Section 401(h) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminal in the United States.

REPLY OF W. R. GRACE & CO. TO ANSWER OF PAN AMERICAN AIRWAYS, INC. AND PAN AMERICAN AIRWAYS CORPORATION AND PETITION OF PAN AMERICAN AIRWAYS CORPORATION FOR AN INVESTIGATION UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT

Now comes W. R. Grace & Co. (hereinafter referred to as "Grace") and respectfully shows to the Board as follows:

1. The present proceeding (Docket No. 779) was initiated by the Board on its own motion to determine whether the public convenience and necessity requires that Pan American-Grace Airways, Inc. (hereinafter referred to as "Panagra") have a route terminal in the United States. Pan American Airways Corporation (hereinafter called "Pan American") has used its 50% ownership in Panagra to prevent Panagra itself from applying to the Board for an extension of its route to a terminal in the United States.

[fol. 5128] 2. Panagra operates in every country in South America, except Venezuela, Uruguay, Paraguay and the Guianas, over more than 8,000 miles of airways. Panagra is the only American international air carrier operating abroad which does not come through to a terminal in

the United States. All of the divisions of Pan American Airways operate to and from United States terminals. The northern terminus of Panagra is at Balboa in the Canal Zone and Panagra is dependent upon Pan American for connecting service from that point to the United States. This connecting service has been and is inadequate in fact and in the nature of the operation any connecting service in air transportation on a major trunk line is inherently inadequate and unsatisfactory and tends to defeat one of the major advantages which air transportation can offer, namely, origin to distination travel. Moreover in this particular service Pan American's interest in the Miami Balboa flight lies primarily in providing a local service between Miami and Balboa and in serving Pan American's other operations in Central and South America. It is only in part concerned with providing Panagra with a connecting service. Panagra, on the other hand, is basically interested in providing a through service to the United States which will adequately serve the 8,000 miles of airways operated by Panagra in South America.

3. Pan American is unable to refute the proposition that the public interest and the effective development of Panagra requires the extension of the Panagra route to the United States. Its strategy has therefore been to use its [fol. 5129] ownership in Panagra to prevent Panagra from applying to the Civil Aeronautics Board for an extension of the Panagra route to the United States. Pan American has done this in line with its avowed intention of maintaining a monopoly of American air transportation, entering and leaving the United States. Failing in this basic strategy by the action of the Board itself in ordering these hearings, Pan American now attempts in this proceeding to divert attention away from the real issue in this case and to confuse the issue by charging Grace with a monopoly of passenger transportation by water on the west coast of South America through its ownership of Grace Line, Inc. and by charging that Grace, in the interests of Grace Line, has prevented the development of Panagra. Neither of these charges is germane to the issue here involved of whether Panagra should be permitted to have an American

terminal or whether the Pan American monopoly should be permitted to continue to relegate the public and Panagra to an inadequate connecting service between the Canal Zone and the United States. In addition both charges made by Pan American are absurd.

4. As to the charge that Grace has a monopoly of passenger transportation by water in the areas served, it should be pointed out that throughout the period of normal operations before the present war, Grace Line had many competitors in the areas served, which included American Pioneer Line, Barber Line, Chilean Line, Dollar Steamship Lines, French Line, Hamburg American-North German Lloyd, Johnson Line, Italian Line, N.Y.K. Line, Pacific Steam Navigation Co., Furness Lines, Panama Line, Pan [fol. 5130] ama Pacific Line, Royal Netherlands S.S. Co., Standard Fruit and S.S. Co. and United Fruit Company. At the present time Grace Line is not carrying any commercial passenger traffic anywhere in the world and its entire cargo operation is for Government account.

5. As to the charge that Grace, in the interests of Grace Line, has prevented the development of Panagra, the entire history of Panagra and the position of the parties in this proceeding show that Grace has always been the one pressing for the expansion and development of Panagra. The action of Pan American in this proceeding is merely another illustration of what Pan American has always done. Pan American has been the one holding back the development of Panagra whenever its development has had any bearing on Pan American's other interests.

6. Grace is not a steamship company nor is it a holding company existing for the purpose of owning steamship shares. Its ownership of stock in Grace Line is only one of the many interests which Grace has. Grace is a large operating company engaged in many forms of business and owning stock in companies engaged in many lines of activity. The interest of Grace in Panagra was an important factor in making Panagra the "best" though not the lowest bidder when the original airmail contract was awarded Panagra in 1929. Without that contract Pan-

agra would have been non-existent. The long experience of Grace on the west coast of South America has, since the [fol. 5131] very inception of the Panagra service, been a vital, constructive influence in the successful development of Panagra.

7. The assertion made by Pan American that "in normal times, almost every passenger carried by Pan American-Grace between the Canal and Santiago, whether through or local, is a passenger lost to the Grace Line, and almost every connecting through passenger carrier by Pan American between the United States and the Canal is likewise a passenger lost to Grace" is contrary to all of the facts of the traffic movement, both air and water, in the areas referred to. Furthermore, it is based on the naive thesis that air transportation has no field of usefulness except to replace surface transportation and must look for its traffic solely to business diverted from surface transportation. The conflict of interest between Pan American and Panagra is real. The alleged conflict between Grace Line and Panagra is illusory.

8. The remainder of the Pan American Answer and Petition consists of an attempted defense of the Pan American connecting service between Miami and the Canal Zone, an attempt to disparage the services and equipment of Panagra, and an attempt to read limitations into Panagra's corporate purposes. Because of its central importance in the present proceeding, we will first discuss the inadequacy of the connecting service.

[fol. 5132]

INADEQUACY OF CONNECTING SERVICE FROM MIAMI TO THE CANAL ZONE

9. Facts showing the inadequacy of Pan American's connecting service between the Canal Zone and the United States are set forth in Grace's Petition in Dockets Nos. 707 and 744 and will be more fully presented and brought down to date at the hearing. Pan American's defense of the connecting service neither meets the charges against it as it actually exists and as it has existed over the years nor does

[fol. 5124]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

EVAN E. YOUNG, being duly sworn, deposes and says: that he is Vice-President of Pan American Airways Corporation; that he has read and is familiar with the contents of the foregoing answer and petition and the attached exhibit; that he intends and desires that in considering said answer and in acting upon said petition, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; and that, to the best of his information and belief, every statement contained in the said answer and petition is true and that no such statement is misleading.

EVAN E. YOUNG
Evan E. Young

Subscribed and sworn to before me, a Notary Public in and for the County of New York, and State of New York, this 27th day of January, 1943.

/s/ DAVID E. GRANT
Notary Public

W. R. Grace & Company Exhibit 140

BEFORE THE CIVIL AERONAUTICS BOARD

Docket No. 779

In the matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

PAN AMERICAN GRACE AIRWAYS, INC.

under Section 401 (d) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminating in the United States

[Stamp: Office Copy — Argued or Submitted 6/25/46 Docketed 7 & 43 M. L. — Diary M. L. — Discharge F/K]

REPLY OF W. R. GRACE & CO.
TO
ANSWER OF PAN AMERICAN AIRWAYS, INC. AND PAN AMERICAN AIRWAYS CORPORATION AND PETITION OF PAN AMERICAN AIRWAYS CORPORATION FOR AN INVESTIGATION UNDER SECTION 412 OF THE CIVIL AERONAUTICS ACT

Communications from the Board with respect to this Reply should be sent to the following:

A. Garni,
First Vice President,
W. R. Grace & Co.,
7 Hanover Square,
New York, N. Y.

Wright, Gordon, Zachry, Parlin & Caldwell,
62 Wall Street,
New York, N. Y.

it attempt to answer the obvious truth that no connecting service other than one of its own which brings Panagra through to a terminal in the United States can adequately serve the public interest and meet Panagra's needs. Pan American's defense does not indicate that its greater capacity between the United States and the Canal Zone than Panagra's south of the Canal Zone is required by other than Panagra traffic which Pan American carries on this service, and that this excess capacity is by no means fully available for Panagra traffic. Pan American's defense also omits reference to the fact that most of such improvements as it has made in the connecting service over the years have been made under pressure from Grace.

10. In recent months Pan American has admitted the inadequacy of the connecting service, attempting to excuse this inadequacy on the ground of the war. It has then confirmed its admission and repudiated its excuse by doubling the connecting service under the pressure of this proceeding and the proceeding in Docket No. 778. This additional service has been pleaded both in this proceeding and in [fol. 5133] Docket No. 778 as a basis for the contention that adequate service now exists. But the extra service is strictly a "fighting ship" operation and has been carefully kept on a "voluntary" basis. Moreover, upon the recent inauguration of service on the New Orleans-Guatemala route (Docket No. 373) Pan American has diverted part of the equipment from the Miami-Balboa service to the New Orleans operation, with the result that the second daily flight on the Miami-Balboa route can only be flown three days a week at most, and this only under the most favorable conditions. This latest development is illustrative of the position in which Panagra always finds itself in relation to this connecting service. A brief history of this service over the past eleven years is set forth below.

11. From January 1, 1932 to July 15, 1936 the Pan American connecting service between Miami and Cristobal was a two-day trip, one day Miami to Kingston, one day Kingston to Barranquilla and thence to Cristobal. For four and a half years Pan American made no improvement in the time required for this service, although Panagra during

the period reduced its schedules over its much longer routes from Cristobal to Buenos Aires from five days in 1932 to three and a half days in 1935. Not until July, 1936 was any improvement made in the connecting service, and then the schedule was reduced by only one half a day.

12. The Grace directors continued to insist on further improvement, maintaining that it was perfectly feasible to operate this service direct between Kingston and the Canal Zone without the deviation to Barranquilla, and that a one-day service between Miami and the Canal Zone could [fol. 5134] thus be established. Pan American claimed that for operating and traffic reasons this was impossible. Under great pressure, however, Pan American was finally induced in July, 1937, to undertake operation of the connecting service on a one-day schedule, not direct but retaining the diversion via Barranquilla, which it claimed was the best that could be done.

13. Pan American never carried out this one-day schedule southbound and the Grace directors continued to insist that it could readily be done if the deviation to Barranquilla were omitted. Finally, in December, 1937, one flight a week was inaugurated direct from Miami to Cristobal via Kingston. A second trip was operated indirectly via Barranquilla scheduled to leave there early in the morning in time for a 9:30 A.M. Panagra departure from Cristobal. At that time Panagra maintained two flights a week south from Cristobal but all efforts of the Grace directors to have both connecting trips operated direct from Kingston to Cristobal were unavailing.

14. Despite Pan American's feigned warnings and misgivings, actual performance under the December, 1937, schedule showed a very high percentage of schedule performance on the one-day direct Miami-Kingston-Cristobal trip and a very large percentage of schedule failures on the trip via Barranquilla. None of the prophesied operating difficulties were encountered on the direct trips. In the first six months under the December, 1937, schedule practically all direct trips were on time, whereas very few of the trips via Barranquilla were on time in Cristobal and

[fol. 5143] is entirely misleading. The fact is that Pan American has never had four-engined marine equipment or four-engined land equipment in operation "*in Latin America*" over land routes. Pan American is today operating "*in Latin America*" two-engined DC3 and DC3A equipment exactly similar to that operated by Panagra.

31. The four-engined marine and land equipment which Pan American states it is using "*in Latin America*" is actually being used in the operation of *over water* routes between the United States and Latin America. At one time the marine equipment was used in over water routes along the east coast of South America but that is not true today. Even in over water routes today Pan American is operating two-engined DC3 and DC3A equipment exactly similar to that operated by Panagra. The Pan American east coast route all the way from Miami to Buenos Aires, including the long over-water flight between Miami and the South American mainland via Cuba, Puerto Rico and Trinidad, is using Douglas DC3As.

B. *Ground Facilities*

32. Grace has never resisted provision of reasonable and adequate passenger facilities. It has resisted extravagance and waste of the taxpayer's money during the period when the operation of all airlines was so preponderantly dependent on government subsidy. It has never regarded expenditure *per se* to be a virtue and does not consider "investment in ground facilities per route mile" as of any significance. Grace regards the adequacy and suitability of the facilities themselves and not their mere cost as the test of wisdom of management.

[fol. 5144] 33. The truthfulness and sincerity of Pan American's attack upon Panagra under this heading may be judged by its method of quotation from Panagra's submission of evidence in its rate case on which it relies in this matter of ground facilities. For example, Pan American quotes:

> "The present passenger facilities at Cali are practically non-existent."

under instructions from the Pan American Board of Directors, Pan American failed to attend a stockholders' meeting of Panagra called at Pan American's own request for the purpose of considering the matter, thus creating a lack of a quorum and rendering impossible any action by the stockholders. Such action and conduct on the part of Pan American and its directors on the Panagra board was intended to and did prevent Panagra from taking any action.

19. In July, 1940, Panagra's services from the Canal Zone south were increased from two to three trips a week. Pan American continued to provide only two direct connecting trips per week. These connecting trips continued [fol. 5138] to be flown with the old Sikorsky Flying Boats although Pan American had, in the meantime, begun using modern and faster Boeing 307s to modernize and speed up its own service along the east coast to Buenos Aires. Not until September, 1940, and then only in response to insistent demand by Panagra under the February 14, 1939 Agreement, did Pan American institute three direct connecting trips with Boeing 307s, these trips flying non-stop from Miami to Balboa.

20. In November, 1940, Panagra instituted a fourth trip between Cristobal and Guayaquil which was increased to a full fourth trip over the whole line in August, 1941. Pan American made no corresponding increase in its direct connecting service and continued to operate only three direct services from Miami connecting with Panagra's four services out of Balboa.

21. In February, 1942, Panagra again increased its service from four to five a week. Pan American made no corresponding increase in its direct connecting services and continued to operate only three such services from Miami to Balboa to connect with Panagra's five services out of Balboa.

22. Not until April, 1942, when Panagra's services were increased to six (which was increased to seven in the following month) did Pan American by the inauguration of daily service provide a sufficient number of direct services out of Miami to connect with all of Panagra's services out of Balboa.

[fol. 5139] 23. During a period of almost a year and a half, from December, 1940, to April, 1942, Pan American failed to provide a sufficient number of direct connecting services from Miami to correspond with Panagra's services out of Balboa, the deficiency being 25% during part of the period and 40% during the balance. Not only was the number of Pan American trips inadequate during this period, but the service itself was subject to many delays which caused serious interruption in Panagra's schedules. During the period July 1 to November 16, 1941, for example, 25% of Panagra's southbound trips from Balboa were obliged to defer departure to the following morning by reason of Pan American's late arrival.

24. In the midst of this intolerable situation, in utter disregard not only of Panagra's position but of Pan American's own obligations under the February 14, 1939 Agreement, Pan American proposed that its Miami Balboa flight (which had theretofore operated non-stop) should include a stop at Camaguey, Cuba. It was perfectly obvious and subsequent experience abundantly demonstrated that this could not be done without further adding to the already serious delays which existed in the connecting service. On November 25, 1941 Pan American filed an application (Docket No. 689) with the Civil Aeronautics Board for authorization to include this Camaguey stop on its route between Miami and the Canal Zone. Panagra on learning of this application pointed out to Pan American that the additional mileage and time required for this stop would so increase elapsed time between Miami and the Canal Zone as [fol. 5140] to destroy the existing connection with Panagra at the Canal Zone and thereby greatly delay schedules from the United States to points on the west coast of South America as well as to Buenos Aires.

25. While these discussions were in progress, Pan American without prior notification of any kind to Panagra filed with the Civil Aeronautics Board on December 3, 1941 a request for an exemption order which would have the effect of permitting the immediate inclusion of the Camaguey stop without the notice and hearing required by the Act. Pan American in making this request omitted to no-

tify the Civil Aeronautics Board in any way of Panagra's interest and concern in the matter and in its letter to the Board stated:

> "To the best of the applicant's information and belief, no air transportation enterprise other than applicant's Cuban subsidiary, which conducts operations to and from Camaguey, has any interest in the rendition of service to that point by the applicant."

26. This was the situation when W. R. Grace & Co. brought the matter to the attention of the Civil Aeronautics Board by the filing of its Petition in December, 1941 (Docket No. 707). Following the outbreak of the war and the withdrawal of steamer service between the United States and the Canal Zone, there was an enormous growth of traffic, passengers, mail and express, originating at or destined to the Canal Zone or immediately adjacent areas which absorbed a great deal of the space available on the Pan American connecting service. The result was that the space on the connecting service available for Panagra traffic be- [fol. 5141] came greatly reduced despite the fact that the carrying capacity of the 307s was obviously larger than that of Panagra's DC3s. The space on the 307s has never been exclusively available for Panagra traffic and, with the condition above referred to, has become less and less.

27. A connecting service with the above record and which can only be kept up to an approximation of adequacy by the constant struggle and effort and the series of crises above described is manifestly not an adequate connecting service. Nor, so long as this condition exists, can there ever be any sound development of air transport between the United States and the west coast of South America and Argentina properly adapted to the needs of the foreign and domestic commerce of the United States.

PANAGRA'S FLIGHT EQUIPMENT AND SERVICES

28. Pursuant to its theory that the conflict of interest between Pan American and Panagra and the facts with respect to Pan American's policy of protecting its monop-

oly at the expense of Panagra may in some manner be obscured by an attack, however unfounded, upon Grace. Pan American seeks to disparage the services and equipment of Panagra and to accuse the Grace directors of responsibility for ulterior motives for fictitious deficiencies in the Panagra operations. This charge, advanced for the first time in these proceedings, is so unwarranted and so unjust and so unfair to the men (many of them being unconnected with Grace) who have devoted years to Panagra's service that it cannot be left unanswered.

[fol. 5142] A. *Flight Equipment*

29. The use by Panagra of single engine equipment in the first years of operation was with the approval of Pan American and with a 100% passenger safety record. As soon as practicable this equipment was replaced by multi-motor equipment. The first American multi-motor airplane available to the commercial airlines was the Ford tri-motor in 1929. The Panagra directors unanimously authorized the purchase of such equipment in May, 1929 and placed it in operation a few months thereafter. The Ford tri-motor plane was followed in quick succession by Douglas DC2, DC3 and DC3A two-motor equipment as these planes became available and Panagra is currently using the best two-motor equipment procurable. With the development of the four-engined land plane, Panagra in 1939 began consideration of the use of four-engined land planes on its routes. As long ago as March, 1940, Panagra authorized the purchase of three four-engined planes (Douglas DC4s) and later contracted for two additional four-engined planes (also DC4s) as Pan American well knows. Delivery of these planes has been prevented by the war.

30. Panagra's operations are over land or along the coast line and are carried on with the same type of equipment as is used by Pan American and the domestic airlines in the United States in similar operations. Pan American's allegation that "although Pan American Airways has had four-engined marine equipment in operation *in Latin America* since 1931, and four-engined land equipment since 1940, Pan American-Grace today still has none"

35. The other extracts are equally misleading. Exhibit A hereto attached completes the quotations from which Pan American's Answer gives only a part and shows the other relevant facts.

C. *The Canal Zone-Guayaquil Sector*

36. Pan American cites as "perhaps the most serious instance of Grace's use of its negative control" over Panagra its attitude with respect to the route between the Canal Zone and Guayaquil. The substance of Pan American's complaint is that Panagra changed on this portion of the route from slow amphibian equipment to the same kind of equipment (Douglas DC3s) as Pan American itself used on its east coast route and changed the route so as to service the City of Cali in Colombia.

37. When the Panagra operation was begun, high altitude transport planes were not in existence and it was thought that the northern sector of the route between the Canal Zone and Guayaquil must be flown over water. Operations were, accordingly, begun with a small amphibian S38 which was subsequently replaced by an amphibian S43 and for a short period by a Commodore, a flying boat. This [fol. 5146] route was never satisfactory from a traffic standpoint or from the standpoint of proper service to Colombia since there are no important cities on the Pacific Coast of Colombia which an over water operation could serve and an amphibian plane was not suitable for crossing the mountain range between the coast and the interior. The one most important city in western Colombia, Cali, is inland, a six hour railroad trip from the port of Buenaventura.

38. When the DC3 became available and it became perfectly practicable to operate the northern sector with DC3s, the Grace directors immediately urged that such action be taken in order to give Cali direct service, to permit of uniform equipment over the Panagra route, and to provide faster service in this sector to the benefit of the whole line. Pan American had done the same thing in 1937 on the east coast by substituting DC3s for four-engined boat operation between Rio and Buenos Aires.

39. Pan American at that time owned about 84% of the German dominated Scadta which had a monopoly of the inferior business in Colombia including service to Cali. Pan American objected to Panagra's going direct to Cali for the reason that this might be prejudicial to Scadta, might interfere with Scadta's business to Cali, and might impair Scadta's monopoly in Colombia. These and neither of the other reasons to which it now refers or those which it spread on the minutes at the time were the real reasons for its objections. There was no mystery about this at the time and, in fact, in the course of the discussions Pan Amer- [fol. 5147] ican sought at one point to satisfy the situation by offering to sell a portion of its Scadta stock to Panagra or to Grace. Grace declined to permit this German dominated company to interfere with Panagra's development. After weeks and months of discussion and after the operating management of Panagra recommended such action on the basis of careful surveys checked and approved by Pan American's technical staff, Panagra provided for the transfer of the northern sector operation to the over land route in January, 1938. The Pan American directors of Panagra, after first blocking the change by refusing to provide a quorum, finally permitted it to pass by appearing but refraining from voting.

40. The results of adopting the overland route via Cali were not at all those indicated in the Pan American Answer and Petition:

(i) While the flight from the Canal Zone to Guayaquil inland via Cali is slightly longer than via the water route, this difference is offset by the greater speed of DC3s.

(ii) The only reason why Panagra's planes stop overnight at Cali and passengers today do not travel between the Canal Zone and Lima in one day is because the present schedule provides for midday rather than morning departure from the Canal Zone connecting with Pan American's schedule leaving Miami the same morning and arriving in Balboa at 12:50 P.M. Not only is it entirely possible to fly the Balboa Lima

given certain "options." When Panagra was formed, Pan American had no pre-emptive or other rights to the air service over what subsequently became the Panagra route. Before any discussions with Pan American began, Grace had undertaken an investigation of air transport possibilities in South America on its own account. In joining with Grace, Pan American received at least as much as it gave. Grace was a large and well-established business in South America and elsewhere. Pan American was a small struggling company, but a few months old and with extremely meagre operations, consisting of little more than routes between Miami, Havana, Nassau and Puerto Rico, with the barest commencement of service to the Panama Canal. Indeed, when Pan American and Grace satisfied the Postmaster General in 1929 that Panagra was the "best" though not the lowest bidder for the airmail contract [fol. 5151] awarded to Panagra in that year, the organization, offices and executives of Grace were pushed forward as cogent reasons for the award to Panagra. The organization, offices and executives of Pan American were mentioned only secondarily, or not at all.

46. Panagra began operations in 1929 under a Certificate of Incorporation containing the purpose clause:

> "To carry, convey, transmit, or transport, as, when and *where lawful*, goods, freight, express, articles of merchandise of every nature and description, securities, passengers, mail and intelligence by means of air craft."

Panagra's original route from Cristobal to Santiago, and then to Buenos Aires, a distance of 4500 miles, was considerably longer than all of Pan American's then routes combined. Panagra was itself a pioneering operation and not an "investment" in any sense. As a result of extensions and modifications of the original route made during the past fourteen years Panagra is today operating more route miles off the original "Panama Canal to Valparaiso, Chile" route than on it. These extensions include Santiago to Buenos Aires (and for a time to Montevideo); inland route across Colombia; interior service in Ecuador; interior service in Bolivia first to La Paz, then to the Argentine

border, then through the length of the Argentine by way of Salta, Tucuman and Cordoba to Buenos Aires, and recently entirely across Bolivia to Corumba, Brazil.

47. All of these extensions of the original route were effected by action of the Board of Directors of Panagra without any suggestion of a new "dedication of capital." These changes brought about by action of Panagra over the years with the acquiescence of Pan American's directors on the Panagra board can hardly now be called [fol. 5152] "repudiations" by Grace. Though the Pan American directors have often endeavored by every means at their command to block the expansion of Panagra into actual or potential competition with Pan American, the dedication of capital theory was not conjured up by Pan American as an aid to the protection of its monopoly until recently. In view of the history of Panagra, it is apparent that the fictitious theory of limitations upon the dedication of capital and upon the corporate purposes of Panagra is a last resort on the part of Pan American.

OTHER MATTERS

48. It is unnecessary and inappropriate to reply here to all of the trivial and irrelevant allegations, unwarranted conclusions, insinuations and inferences and to the purely argumentative matters set forth in Pan American's Answer and Petition. Several items falling within these categories, however, may be briefly commented on as follows:

(a) The facts leading the Board to fix different rates of mail pay in the Pan American and Panagra cases are well known to the Board and need not be discussed here. We believe that the records in the two cases show that operating expenses of Pan American and Panagra were not far apart and that the difference between the two cases results almost entirely from Pan American having a larger revenue resulting from the highly concentrated traffic which it enjoys in Central America and between the United States and South American and the West Indies. In this connection it is interesting to note that Pan American's original Post Office mail contracts were on the

run via Cali in one day with DC3s, but Panagra has [fol. 5148] done it on many occasions when delays in Pan American's connecting service from Miami have required Panagra to delay departure until the following morning. One-day service with S42s, the only four-engined ship available in 1937, would have been impossible.

(iii) Placing Cali on the main line added greatly to the usefulness of Panagra's service and contributed important income revenue. Uniform equipment and elimination of expensive boat or amphibian operation which it made possible resulted in substantial reduction of operating expense.

41. The experience of Panagra from the time this change of route was made to date demonstrates its wisdom. It must be borne in mind that at the time the step was taken the choice was between DC3s and S42s. The present four-engined land plane had not been heard of in 1937. The four-engined equipment offered by Pan American in order to induce Panagra not to serve Cali was wholly uneconomical for the purpose proposed by Pan American. If Panagra had loaded itself down with such slow flying boat equipment, it would never have ceased to regret the loss of prestige not to mention the financial loss it would have sustained.

42. Pan American's reference to an offer of four-engined equipment in 1941 is similarly misleading. That offer was an attempt to prevent Panagra from applying for the extension of its route to the United States here at issue. When the New Orleans route was under consideration Grace sug- [fol. 5149] gested that Panagra apply for this gateway. Pan American declined. While the matter was under discussion, Grace suggested as a possible compromise an arrangement under which Panagra might be permitted to operate its planes through to the United States over Pan American's franchise. Panagra was obviously not interested in any reciprocal arrangement whereby Pan American would operate its planes over Panagra's route.

43. Pan American professed to be interested in the proposal, but dragged the matter along until Grace again made demands for improvement in the connecting service in October, 1941. Then Pan American submitted a counter proposal whereunder Panagra could *offer* to Pan American Panagra four-engined equipment for operation by Pan American on Pan American routes, and Pan American could *offer* to Panagra Pan American four-engined equipment for operation by Panagra on Panagra routes. Either party could refuse such offer. The proposal gave neither party any right to the interchange of any equipment and in view of the fact that the counter proposal related to four-engined equipment, which Pan American had and which Panagra did not have, it was obviously designed not to enable Panagra to fly direct to the United States, but instead to secure to Pan American a foothold on the Panagra route.

THE SCOPE OF PANAGRA'S CORPORATE PURPOSES

44. The capital invested in Panagra is not "dedicated" to any such restricted air service as Pan American contends nor is the right of Panagra to extend its route to a United States terminal forever precluded by any such newly discovered "dedication of capital". Pan American's theory [fol. 5150] is based upon a letter dated August 31, 1928 written as a part of the negotiation leading to the formation of the joint enterprises, finally culminating in Panagra. Practically none of the terms of that letter were ever carried out. Peruvian Airways, the company mentioned in the letter and formed after the letter was written, was never used for the through service contemplated by the letter; the line never ran to Valparaiso and does not run there today; Pan American except in a technical advisory capacity has never had "charge of the operation."

45. Before Grace had any contact whatever with Pan American, Grace had begun an investigation of the possibilities of air transportation in South America. Grace did not join with Pan American in the formation of Panagra as a mere "investor" permitted to "participate" and

30% reached Cristobal too late for Panagra to make Guayaquil that day.

[fol. 5135] 15. These delays in Pan American's indirect connecting trip overnighting at Barranquilla were inherent in the schedule on which that service was operated. Arrival of this trip in Cristobal in time for Panagra to leave on schedule was exposed not only to possible delays in the trip between Miami and Barranquilla but also to two additional possibilities of delay which did not exist on the direct trip. The plane from Miami to Barranquilla did not proceed on to Cristobal but transferred its mail, passengers and express at Barranquilla to the plane operating between Venezuela and Cristobal. This meant that in order to reach Cristobal on time (1) the plane from Venezuela to Cristobal, which picked up Panagra's traffic at Barranquilla, had to arrive at Barranquilla on the same day as the plane from Miami and (2) on the following morning this Venezuela plane had to leave Barranquilla at the scheduled hour of 5:45 A.M. and arrive at Cristobal at 8:00 A.M. Weather or any other delays on any of these intervening sectors meant that Panagra's long international flight to Buenos Aires, delayed, in any event, to a 9:30 A.M. departure to accommodate this inadequate indirect connection, could not leave Cristobal on schedule and must [illegible] at the very start of its 4500 mile run. In addition to [illegible] delays inherent in this indirect service via Barranquilla, that service was subject to the further handicap that increase in volume of Colombian and Venezuelan traffic cut down space available for passengers, mail and express destined for the Panagra route.

16. Not only did Pan American give Panagra an inadequate service but the retention of the Barranquilla deviation was manifestly dictated by the interest of Pan Ameri-[fol. 5136] can in the Scadta Company in which Pan American owned some 84% of the stock. The Scadta Company, which was operated by Germans, was competing with Panagra for international traffic to and from certain interior points in Colombia. The Pan American-Barranquilla connection gave a direct service to Scadta and an indirect service to Panagra, obviously putting Scadta in a preferential

position. It was quite apparent that Pan American was favoring the company in which it had the larger interest.

17. It was this long record on Pan American's part of lack of progress, lack of cooperation and lack of any recognition of any obligation to provide Panagra with adequate connecting service (even to the point of refusing to institute the second direct Miami Kingston Cristobal service in the face of the above experience) which led Panagra to the conclusion that only by operating its own connecting service could the public interest be served and Panagra's operating problems in this respect be solved. Protracted discussions ensued which were finally terminated by the compromise agreement dated February 14, 1939. Two of the basic provisions of that five year agreement were: First, that Pan American would inaugurate the second Miami Kingston Cristobal direct connecting service which it had up to then declined to do and would maintain an adequate direct connecting service for Panagra's through mail schedules; and second, that if Pan American failed to provide such adequate direct connecting service it would cause the Pan American directors on the Panagra board to take such action as would permit Panagra to apply for a certificate to operate a connecting service of its own. [fol. 5137] Pan American instituted the second direct Kingston Cristobal service on or about April 1, 1939, in accordance with the terms of the above agreement.

18. Early in 1940 when Pan American (Docket No. 373) and American Export Airlines, Inc. (Docket No. 497), applied for the route between New Orleans and the Canal Zone, the Grace directors of Panagra endeavored to persuade the Pan American directors to permit Panagra to apply for this connecting route as a solution to the connecting service problem. Pan American declined to acquiesce in this. The President of Panagra sought to bring the matter before the board of Panagra. Various special meetings of the Board of Directors were called in 1941 for this purpose but the Pan American directors of Panagra, constituting one-half of the board, repeatedly failed and declined to attend such directors' meetings, thus making action by the Panagra Board of Directors impossible. This was done

Pan American omits to quote the immediately following sentences:

> "The field is a military field and the local authorities will not permit buildings at this point. New arrangements must be made. It is anticipated that a new field will be constructed. The sum of $150,000 represents Panagra's share of new passenger facilities which will be in all probability shared with Aviatca."

Moreover, Pan American fails to state that the facilities above referred to are those of its own affiliate, "Aviatca," and that since the statement of evidence referred to was prepared, arrangements have been entered into between Panagra and Aviatca for the construction of a new airport at Cali in which Panagra will have half ownership and will accordingly be in a position to see that adequate facilities are provided.

34. As another example, Pan American quotes with respect to Oruro:

> "There are no facilities at this point at the present time."

Pan American omits to quote the immediately following sentences:

> "The airport which was used up to six months ago was not satisfactory under all weather conditions, and its continued use by Panagra was uncertain. Accordingly, a new airport has been constructed and the passenger and radio station must be set up at the new site. It (fol. 5145) is significant in this connection that Oruro is the junction of the Bolivian operation with the national operation on the international run, and movements through this point has actually, in terms of trips, quadrupled in the last six months."

Pan American also fails to state that since the date of the statement of evidence an entirely new attractive and commodious passenger station has been erected on the new airport and is now in actual service.

Pan American failed to state that the airport at Cordoba is a military field, making it impossible up to date to make arrangements for permanent passenger facilities.

[fol. 5161]

W. R. Grace and Company Exhibit 141

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 779

[Stamp—Office Copy—Received 3 10 43 M.L.—Docketed 3 11 43 M.L.—Diary Not Entered PWB—In Charge FJK]

In the Matter of the alteration, amendment and modification of the certificate of public convenience and necessity of

Pan American-Grace Airways, Inc.

under section 401 (h) of the Civil Aeronautics Act of 1938, as amended, to provide for a route terminal in the United States.

AMENDMENT TO THE PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

Thurman Arnold
Assistant Attorney General

Arne C. Wiprud
William R. Kuefener
Special Assistants to the Attorney General

Clarence J. Nickman
Special Attorney

[fol. 5162]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 7[illegible]

In the Matter of the alleged unauthorized and unlawful [illegible] of the certificate of public convenience and necessity [illegible]

Pan American-Grace Airways, Inc.

under section 401 (h) of the Civil Aeronautics Act of 19[illegible] as amended, to provide for a route between the United States [illegible]

AMENDMENT TO THE PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

TO THE HONORABLE
THE CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

WHEREAS, your petitioner, the Department of Justice, having filed with this Board a petition for leave to intervene in the above entitled proceedings, and a petition to intervene having been granted on November 12, 1945, and order of the Board, your petitioner now desires to amend said petition, and prays leave so to do in the following manner:

1. Strike paragraph II of the petition and substitute in lieu thereof the following:

That the Federal antitrust laws are applicable to carriers engaged in interstate commerce by air and petitioner avers that your petitioner is concerned with the agreement, arrangement, contract or conspiracy between carriers which restrains competition or tends to create a monopoly. It is petitioner's interest that Pan American Grace Airways, Inc., hereinafter referred to as [illegible] [fol. 5163] agra, which operates in foreign transportation [illegible]

America, and otherwise, is now owned by Pan American-Airways Corporation and W. R. Grace & Company, hereinafter respectively called Pan American and Grace, and has been so owned since the organization of the joint enterprise in 1929. That Pan American is the parent corporation of the Pan American Airways System, of which Pan American Airway, Inc., is the principal operating subsidiary; and Grace is the parent corporation of the Grace enterprises, which include shipping and other commercial interests on the west coast of South America; that Pan American and Grace each own one-half of all of the issued and outstanding voting stock of Panagra.

That complaint by Grace against Pan American, and answer and petition by Pan American against Grace have been filed with this Board, each alleging therein that the other has engaged in restrictive and suppressive practices and that both have sought to control, limit and suppress the growth and development of Panagra in their own interests. These and other allegations and counter allegations together with the public issues of monopoly of air transport and the control of one form of transport by another raise questions of public interest under the antitrust laws that are the immediate concern of the petitioner whose interest herein is, among others, to ascertain the facts as they may bear upon any violation of said antitrust laws by either or both parties to this proceeding.

Respectfully submitted

ARNE C. WIPRUD
WILLIAM R. KUEFFNER
Special Assistants to the Attorney General

CLARENCE J. NICKMAN
Special Attorney

By direction of

THURMAN ARNOLD
Assistant Attorney General

Dated March 9, 1943
Washington, D. C.

[fol. 5164] WILLIAM R. KUEFFNER, being duly sworn deposes and says:

That he is Special Assistant to the Attorney General and is authorized to execute and file the foregoing motion; that he has read and is familiar with the contents thereof; that he intends and desires that in granting or denying the amendment hereon, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief every statement contained in the instrument is true and no such statement is misleading.

WILLIAM R. KUEFFNER

Subscribed and sworn to before me this 9th day of March, 1943.

Notary Public, D. C.

(SEAL)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing amendment to the petition for leave to intervene has been served on each party to the above entitled proceeding.

WILLIAM R. KUEFFNER

Dated at Washington, D. C.

March 9, 1943

cannot use these planes indefinitely. The DC4s would be [fol. 5167] unsuitable for a variety of reasons and Martins or Convairs even if they can be made effective at these altitudes would be pretty expensive.

All of this would be relatively unimportant if we could see a large revenue accruing from calling at these points. The trouble here, however, is that our haul on the heavy U. S. traffic is limited to the short sector between these points and Balboa. Unless there is reason to believe that considerable traffic could be found between these Colombian points and B.A. they would not, therefore, prove very satisfactory revenue stops for us.

In spite of all these considerations I think it would be well worthwhile to avail of your visit to Colombia to see if you could get any ideas on the advisability of our moving in to these points and the likelihood of our securing Colombian authorization if we did so. If any basis can be found for making this move satisfactory, there is nothing to prevent our making it so far as Panair is concerned. Avianca would, of course, oppose. Braniff would also oppose so long as they entertain any intentions of some day serving Bogota but I should think that their position might not be too serious if we had a plan for moving in promptly in contrast to their long delay in doing anything effective in this direction.

Sincerely yours,

(sgd) HAROLD J. ROSE

copies sent to
Guayaquil and Bogota

[fol. 5168]

W. R. GRACE AND COMPANY EXHIBIT 144

W. R. GRACE & CO.
HANOVER SQUARE
NEW YORK 5, N. Y.

May 17th, 1949

MEMORANDUM TO MR. ANDREW B. SHEA

When do we plan to file application for Bogota? I feel it is important that we file before CAB.

I don't think that Latorre knew that Pan American had an application pending when he made the statement that we should get permission in Colombia first.

J.P.G. Jr.
(Signed) JPG

[fol. 5169]

W. R. GRACE AND COMPANY EXHIBIT 145

September 12th, 1949

MEMORANDUM TO MR. ANDREW B. SHEA

I presume now that you have letter =12-900 from Latorre, you will have papers filed with the C.A.B. immediately, asking for Panagra's right to go to Bogota.

J.P.G. Jr.
(Signed) JPG

basis of $2.00 per mile, whereas Panagra's was on the [fol. 5153] basis of $1.80 per mile and that even with subsequent reductions the basic Panagra Post Office mail rate was lower than that of Pan American in similar services for a period of over twelve years.

(b) Panagra's war services are similarly too well-known to the Board to require reiteration here. In this connection it may be stated that Pan American has never suggested any war service which it considered Panagra should undertake. On the contrary, Pan American through its negative control prevented Panagra from volunteering the operation of a service under the Board's order in Docket No. 775 and has sought to take avail of the war situation to gain for itself control of certain airports on the Panagra route.

(c) With reference to Pan American's recent alleged offers to name a ninth director and to arbitrate, we merely wish to point out that Grace agreed to the immediate appointment of a ninth director to decide all matters involving Panagra's operations with regard to which the Pan American and Grace directors might not be able to agree. Pan American, however, insisted that the ninth director should only have "power to break any deadlock on any questions arising in connection with operations of the company *that fall within the scope of the dedication of capital made by the two stockholders.*" Obviously such an offer by Pan American begged the entire question and was not a real offer at all.

CONCLUSION

49. The present proceeding is the culmination of efforts on the part of Grace covering many years to permit Panagra to develop as an integral air carrier and to assume the independent responsibilities which its position in South [fol. 5154] America requires, over the persistent attempts of Pan American to thwart the development of Panagra in order to protect from competition routes in which it has more than a fifty percent interest. Pan American, in its own operations, has always recognized the vital importance of bringing its lines through to terminals in the United

States and not interposing connecting services over its own. Its Atlantic, Pacific, Western and Eastern divisions all come to terminals in the United States. Several years ago it arranged that its Mexican subsidiary come through to Los Angeles.

50. At the very moment when Pan American is opposing Panagra's coming to United States terminals, it has caused to be filed with this Board applications by its 100% owned foreign subsidiaries, Panair do Brasil, and Compania Nacional Cubana de Aviacion, S.A., to extend their routes to United States terminals. Since the present proceedings were begun, various foreign companies have filed applications with the Board to extend their routes to the United States, including an application by Taca to extend to Miami a service operating from the Canal Zone via Central America. Eastern Airlines and National Airlines have filed applications to extend their domestic routes from United States terminals to the Canal Zone. Pan American itself has been granted a certificate from New Orleans to Guatemala where it connects with its route to the Canal Zone via Central America.

51. Unless Panagra is permitted to extend its route to the United States in this proceeding, it may later on find that so many others have already entered the field that its [fol. 5155] extension is impracticable despite its urgent desirability from the standpoint of the public interest in a through route. Unless relief is granted Panagra in this case there is grave danger that a situation may arise, where this great international service will be the only one operating in South America desiring a United States terminal which is denied this facility and where for lack of this facility it will be placed at a ruinous disadvantage in the struggle for the air which will certainly follow the termination of the war.

52. We respectfully submit that every consideration of sound public policy dictates that Panagra, the pioneer American international line in South America which has over fourteen years built up and successfully operated a line serving practically all of South America and with a route mileage second only to that of the Pan American Air

[fol. 5165]

W. R. Grace and Company Exhibit 142

= 825

Letter No. 2
H. J. B. Trip Series

Buenos Aires
February 23, 1946

A. Garni, Esquire
New York, N.Y.

Dear Garni:

Your letter No. 3.

I trust Knauer's information does not prove correct, as it would be a pity to have this matter still further protracted with legal technicalities. I had hoped that something constructive might be accomplished, as suggested by your No. 1. In any case, the fact that our friends are filing for rehearing in 779 simultaneously with motion for re-argument in the Circuit Court of Appeals seems to indicate that they have little confidence in the likelihood of securing a re-argument.

With the growing competition which I see everywhere here, and the rapid expansion of all the lines here, it seems fantastic that Pan American should continue to prejudice their own and Panagra's future by further delaying our extension to the United States.

Sincerely yours,

[fol. 5166]

W. R. GRACE AND COMPANY EXHIBIT 143

J.P.G. Jr. Trip Series No. II

New York, November 5, 1948

Mr. J. P. Grace, Jr.,
Lima, Peru

Dear Peter:

PANAGRA, COLOMBIA

Your trip series No. 1.

You are right in your understanding that Panagra may at any time apply for inclusion of Bogota and Medellin in their route. There is, however, no arrangement under which Western Colombia is considered Panagra territory or under which Panair will sell Cuba to Panagra. Pan American has always made it clear that they would seek a service of their own to Bogota. I think it quite likely that once one American line gets into Bogota that fact would be used as an argument against others even though our experience in other places, as for example in connection with Braniff, has been quite otherwise.

There are, as you know, a number of reasons why we have not moved to go into Bogota and Medellin. Our financial position has hardly justified taking on a route diversion which could hardly show a profit. We could not, of course, consider diverting our DC6 service to these places, even if the airports were suitable which I understand is not at the moment the case. With Bogota it is not merely the mileage diversion but the weather hazard at Bogota which would pretty nearly wreck our through schedule, already having difficulties enough under this heading. Our DC3 service would be far from competitive and to make it competitive equipment-wise would involve a considerable capital investment. As a matter of fact, the future of this whole DC3 service is somewhat problematical as we obviously

[fol. 5158] ARICA

"At the present time there is no passenger station at Arica. Passengers are handled from an office in the corner of the hangar. *This arrangement has become increasingly unsatisfactory with the increased traffic.*"

Pan American failed to state that Panagra is required to use the military airport and military facilities at this point. Although Panagra has long endeavored to make arrangements to provide more attractive facilities and is still working on the problem, this has not as yet been possible. It should also have been mentioned that the unsatisfactory nature of the facilities at Arica does not arise from the size of existing facilities, which is ample, but is rather a question of attractiveness from the public relations point of view.

ANTOFAGASTA

"Present passenger facilities at Antofagasta are wholly inadequate. *At the time the building was constructed, Panagra was not certain as to the length of time it would be given operating privileges at this point, and indeed the very status of the building itself remained in doubt. Accordingly a very small and somewhat temporary structure was erected. Now that services are increasing substantially and satisfactory arrangements have been made with local authorities concerning use of the airport and related matters, it seems appropriate to improve the passenger facilities.*"

LA PAZ

"The present building at La Paz was constructed in 1937. Even prior to the inauguration of the Bolivian services to Corumbá, this passenger station was congested and generally inadequate. *With the development of the additional Bolivian services, immediate improvement becomes essential. This station is now one of the more important points from the point of view of traffic movement and original facilities have not been ex-*

panded to keep pace with developments. Building costs at La Paz are extremely high."

[fol. 5159] Thus, Pan American failed to bring out the fact that enlargement of the facilities at La Paz has become necessary because of Panagra's expanding activities in Bolivia and that such enlargement is being undertaken.

ORURO

"There are no facilities at this point at the present time. *The airport which was used, up to six months ago was not satisfactory under all weather conditions, and its continued use by Panagra was uncertain. Accordingly, a new airport has been constructed and the passenger and radio station must be set up at the new site. It is significant in this connection that Oruro is the junction of the Bolivian operation with the diagonal operation on the international run, and more mail through this point has actually, in terms of trips, quadrupled in the last six months.*"

Again Pan American failed to state that since the date of the statement of evidence an entirely new, attractive and commodious passenger station has been erected on the new airport and is now in actual service.

UYUNI

Pan American failed to state that Uyuni is not an overnight stop except in emergency and that it is obviously impossible to provide hotel accommodations at every point where an emergency overnight stop may be necessary. Pan American also failed to state that despite this fact Panagra has recently completed at Uyuni a small new station adequate for present and immediate future needs.

CORDOBA

With respect to Cordoba, Pan American quoted:

"At the present time, the only passenger facilities at this point are a small portable building."

ways System itself, should be authorized and required to extend its route to a terminal in the United States.

Dated: June 25th, 1943.

Respectfully submitted,

W. R. GRACE & Co.,

By A. Garni
First Vice-President.

(fol. 5156)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

A. GARNI, being duly sworn, deposes and says: that he is First Vice-President of W. R. Grace & Co.; that he has read and is familiar with the contents of the foregoing reply and the attached exhibit; that he intends and desires that in considering and acting upon said reply, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; and that, to the best of his information and belief, every statement contained in said reply is true and that no such statement is misleading.

A. Garni

Subscribed and sworn to before me, a Notary Public in and for the County of New York and State of New York, this 25th day of June, 1943.

Catherine L. Purcell
Notary Pujblic.

CATHERINE L. PURCELL
NOTARY PUBLIC
Kings Co. Clerk's No. 375, Reg. No. 138-P-5
New York Co. Clerk's No. 323, Reg. No. 228-P-5
Nassau Co. Clerk's No. 18 P 45
Commission expires March 30, 1945.

[fol. 3137] EXHIBIT A

CONTENT AND EXPLANATION OF THE EXTRACTS FROM DESCRIPTION OF PASSENGER FACILITIES IN STATEMENT OF EVIDENCE SUBMITTED BY PANAGRA TO THE BOARD IN DOCKET NO. 716 AS QUOTED BY PAN AMERICAN IN EXHIBIT B TO THE ANSWER AND PETITION OF PAN AMERICAN IN THE INSTANT PROCEEDING.

Extracts which Pan American quoted are in plain type and matter which Pan American failed to quote is italicized.

CALI

"The present passenger facilities at Cali are practically non-existent. *The field is a muddy hole and the local authorities will not permit buildings at this point. New arrangements must be made. It is anticipated that a site will be selected.* The cost of *Panagra's proposed* [private] share of *such passenger facilities which will be in all probability shared with Avianca.*"

Pan American also failed to state that the facilities referred to as being practically non-existent are those of its own affiliate "Avianca" and that since the statement of evidence from which the quotation was taken was prepared arrangements have been concluded between Panagra and Avianca for the construction of a new airport at Cali at which Panagra will have half ownership, enabling it to see that adequate facilities are provided.

TALARA

"*The new Standard will be used to provide the passenger station which has not been adequate but as the increased movement of traffic.* The passenger station was built at a time when Panagra was operating aircraft having a maximum capacity of 10 passengers and has not been enlarged since that time in spite of fact larger planes are at present now in use."

MICRO CARD
TRADE MARK ®
21
1223
MATTHEW BENDER & COMPANY
MB
3-6-63
microcard

matics, furnished a detailed report on the subject some months ago.

Questioned yesterday, the present Director, Major Escandon, manifested that it was true that informal conversations were being carried out on the subject; that the Kellogg Olaya agreement is still in force and clearly establishes the mutual agreement between both countries that their commercial aviation companies establish service to the ports of cities of the Atlantic coast as occurs presently with Pan American and Braniff which come to Barranquilla and in turn the Avianca Colombiana comes up to New York.

Naturally, added the Director of Aeronautics, upon agreement with companies such as Pan American and Braniff to come to the capital, it will be necessary to make a new aviation agreement which will modify the Kellogg Olaya pact which presently governs the aviation relations of the two countries. The Director of Aeronautics added that the authorization for the mentioned North American aviation companies to extend their service to Bogota merits careful study especially as concerns the compensation that Colombia should receive, taking into account that said routes are being served by Colombian companies.

With reference to the advice published by some newspapers to the effect that a decree is being prepared nationalizing the country's airports, the Director of Aeronautics and the Sub-Director, Mr. Wolton, manifested yesterday to the reporter of this paper that they did not know of any recent decree on the subject.

It is noted in this respect that quite sometime ago a law was presented to the Colombian Congress which ordered the creation of the Corporacion de Aeronautica y Radiocomunicaciones. Said law was never approved and according to the financial calculations of that period this [illegible] measure would have cost the National Treasury approximately 5,000,000 pesos. Presently it is calculated that the cost of nationalizing the airports would be 50,000,000 pesos.

d. 5176]

W. R. GRACE AND COMPANY EXHIBIT 149

A.B.S. SERIES LETTER
NO. 11392

March 29, 1950

Jorge Hernan Latorre
BOGOTA, Colombia

APPLICATION FOR BOGOTA ROUTE

ar Dr. Latorre:

Although we appreciate from your ABS #13040 that the AC may not wish to take any action in authorizing a new international service to Colombia until completion of negotiations of the Bilateral Agreement with the U.S.A., we still el that an application should be filed directly with the AC for an extension of Panagra's route to Bogota. It ould be borne in mind that Panagra has been providing international service to Colombia for many years and at its application is not the same as that of a carrier asking to provide a new service. Panagra's application is erely for an extension of an existing service and we are e that you can convince the DAC that it should be treated such. This line of reasoning also applies to the sugstion that Panagra's application should be submitted rough diplomatic channels. While we appreciate that pplications from carriers not already serving Colombia ould possibly be submitted through the State Depart ent, Panagra's application is not in this category and we e sure that when this is pointed out to the DAC, they will preciate the distinction.

As an additional argument to those contained in our BS #11382 justifying our original plan to consider the ute to Bogota as an extension of Panagra's present route rough Colombia, you may wish to point out to the DAC d. 5177] that for operating reasons resulting from the ture of the terrain and the location of existing air naviga nal aids, Panagra would almost certainly have to operate m Bogota to Ecuador via the Cauca Valley, possibly

crossing the Cordillera ridge to the west of Cali and proceeding outside that range of mountains. Whether the operation were conducted up and down the Cauca Valley or outside the western Cordillera range, Panagra's planes would fly almost directly over Cali. For this reason, the location of both Cali and Bogota on the same north-south route through Colombia would not represent any appreciable diversion from the most direct route from Bogota to the south.

We would like very much to have Panagra's application filed now so that it may be considered as soon as possible. Will you please arrange for this filing direct with the DAO unless, after consideration of the foregoing, you are convinced that filing at this time would result in total prejudice against such application so as to seriously injure the chances of its approval. If you are so convinced, please let us know as soon as possible.

Very truly yours,

J. P. Gra[illegible], Jr.

P.S. In your ABS #1361 you say that you have been told unofficially by the American Embassy that Colombia will agree to Panagra, Pagnit and "one other airlines. Braniff, Eastern or Delta" making Bogota a scheduled stop. We are puzzled about the reference to Delta inasmuch as no reference to a Delta application has been found here. Will you please clarify this reference for us.

informado ya ampliamente, y precisamente el señor Alejandro Perey Wolton, actual sub-director de la aeronáutica, suministró una detallada información sobre el particular, hace algunos meses.

Interrogado ayer el director actual, mayor Escandón, manifestó que efectivamente se adelantan conversaciones informales sobre el particular; que aún rige el convenio Kellog-Olaya, que claramente establece el mutuo consentimiento de los dos países para que sus empresas comerciales de aviación establezcan líneas hasta los puertos o ciudades de la costa del Atlántico, cómo ocurre actualmente con la Pan American y la misma Braniff, que llegan hasta Barranquilla, y a su vez la Avianca colombiana, llega hasta Nueva York.

Naturalmente, agregó el director de aeronáutica, al convenirse con empresas como la Pan American y la Braniff, que llegarán hasta la capital, habría necesidad de verificar un nuevo convenio aéreo, que modificaría el pacto Kellog-Olaya que rige en la actualidad las relaciones aéreas de los dos países. El director de aeronáutica añadió que la autorización para que las empresas norteamericanas de aviación citadas llegarán a ampliar sus líneas hasta Bogotá, merece detenido estudio, especialmente en lo que concierne a la compensación que debería recibir Colombia, teniendo en cuenta que dichas líneas están siendo servidas por empresas colombianas.

NACIONALIZACION

En referencia con las noticias publicadas por algunos diarios, según las cuales se prepara un decreto nacionalizando los aeródromos del país, el director de aeronáutica, y el sub-director, señor Wolton, manifestaron ayer al cronista de este diario que no conocían ningún decreto reciente sobre el particular.

Se anota al respecto que desde hace ya bastante tiempo fue presentada una ley al congreso de Colombia que ordenaba la creación de la Corporación de Aeródromos y Radiocomunicaciones. Dicha ley nunca fue aprobada, y según los cálculos fiscales de aquella época, la medida mencionada

costaría al tesoro nacional aproximadamente veinte millones de pesos. En la actualidad el valor de la nacionalización de los aeropuertos se calcula en cincuenta millones de pesos.

Por lo demas, y por informaciones de este diario público se halla perfectamente enterado del proyecto nacionalización de los aeropuertos, por publicaciones petidas que se han hecho. En cuanto a la realización proyecto mencionado, se calcula que es muy remoto cumplimiento, teniendo en cuenta las razones aducidas terriormente.

[fol. 5173]

W. R. GRACE AND COMPANY EXHIBIT 148

A. B. S. Series
=14336

New York, February 2

Dr. Jorge Herman Latorre
BOGOTA, Colombia

Dear Dr. Latorre:

PANAGRA SERVICE TO BOGOTA

I refer to my A.B.S. Series Letter =14186 of August 1949 and your A.B.S. Series Letter =12800 of September.

As you are aware Panagra filed an application with the United States Civil Aeronautics Board on October 2 for permission to conduct scheduled operations to and Bogota. Panagra is now requesting that the docket this application be expedited, and we would like to your opinion as to whether the time has not come to application for this service with the proper authorities Colombia.

Very truly yours,

ABS

[fol. 5178]

W. R. GRACE AND COMPANY'S EXHIBIT 150

C
O
P
Y

PAN AMERICAN GRACE AIRWAYS, INC.
CHRYSLER BUILDING
NEW YORK 17, NEW YORK

April 17, 1950

Honorable Joseph J. O'Connell, Jr.
Chairman
Civil Aeronautics Board
Commerce Building
Washington 25, D. C.

RE: Docket No. 4159

Dear Mr. Chairman:

On October 24, 1949, Pan American Grace Airways, Inc. (Panagra) filed application for an amendment of its certificate of public convenience and necessity that would permit it to serve Bogota, Colombia as an intermediate point on its present Balboa-Cali-Guayaquil route. This application has been assigned Docket No. 4159 but no hearing has yet been scheduled with respect thereto.

Panagra wishes to request hereby that this application be set down for hearing as soon as possible. You will understand that Panagra is naturally anxious to extend its service to the capital and the largest city of Colombia. Prompt initiation of such service is particularly important at this time in view of the fact that AVIANCA, a Colombian carrier, has, for almost a year operated direct Bogota-New York service. Since Panagra's Bogota traffic is now transferred to and from AVIANCA at Cali, it is apparent that AVIANCA's one-plane service from Bogota to New York greatly reduces Panagra's traffic potential in Bogota. AVIANCA naturally will not stress the routing of Bogota-U. S. A. traffic via Cali, for transfer there to Panagra, so long as its own direct New York service is available. This

serious competitive handicap should be eliminated as soon as possible.

In addition to the existing foreign flag competitive advantage, you are undoubtedly aware that LANSA, another Colombian carrier, has recently filed with the Board an application for a Bogota-Miami route. The pendency of this proceeding indicates that early action on Panagra's application is desirable if the international carriers of both (fol. 5479) Colombia and the United States are to secure substantially equal reciprocal treatment. Certainly the spirit of the Kellogg-Olaya Agreement of 1929, as interpreted by the Board, would justify Panagra's application. Though the agreement does not in terms provide general reciprocal rights in each country to commercial aircraft of the other, the Board so treated it in its Order E-2348 granting AVIANCA the Bogota-New York route.

There is at present no one plane, or one-carrier service between the capital of Colombia and the capitals of Peru, Chile, Bolivia or Argentina. Granting of Panagra's application will enable it to provide this service.

It should be noted, moreover, that Panagra has recently completed the altitude performance tests necessary for obtaining CAA certification of DC-4 equipment for airports as high as that of Bogota. Panagra is therefore for the first time in a position to serve the projected extension with four-engine equipment.

The ground facilities at Bogota are adequate for the service proposed by Panagra and virtually all the necessary equipment and personnel needed to undertake the route extension applied for are already available. Panagra is therefore in a position to undertake the service promptly upon the granting of its application with only the minimum of capital expense.

These considerations suggest that action on Panagra's pending application, Docket No. 4159, should be taken by the Board at the earliest possible moment. We shall greatly appreciate any steps you can take to bring this about.

Yours very truly,

[fol. 5180]

W. R. GRACE AND COMPANY EXHIBIT 151

[Handwritten notation—Bogota file]

June 9, 1950

MEMORANDUM TO MR. J. P. GRACE, JR.

Your London New York memorandum of the 27th re the Aviation Daily report of testimony of HJR and myself.

As usual, the Aviation Daily's report is incorrect. Neither Mr. Roig nor I testified that the interchange agreements would not be carried out unless the stock options were approved. We did testify on cross examination that the interchange agreements and the stock option approval are interdependent by their terms which, of course, is the case.

Trippe did testify that the interchange agreements would not become operative if the Board disapproved the stock options as submitted.

Dodero did not testify and Schneider did not take his deposition. Toomey did testify in executive session and denied all allegations in Dodero's affidavit.

A. B. S.

[fol. 5181]

W. R. GRACE AND COMPANY EXHIBIT 152

July 6, 1950

MEMORANDUM TO MR. A.B. SHEA

RE: BOGOTA ROUTE

Status in U.S.

1) As you know, we applied to the CAB last October for an amendment of our certificate to permit us to serve Bogota as an intermediate point on our present Balboa/Cali Quito Guayaquil route. Docket #4159 was assigned but no hearing has yet been scheduled.

2) On April 17th we requested expeditious hearing on our application, by the CAB, using loss of business to Avi-

anca (operating direct Bogota New York), the application of LANSA for a Bogota Miami route, the absence of one carrier service between the capital of Colombia and the other Panagra South American capitals, and our CAA altitude certification for DC-4 equipment as reasons justifying an early hearing.

3) On June 8th the CAB wrote, saying that expeditious hearing did not seem warranted since Braniff had not been able to obtain the right to serve Bogota. On June 28th we answered the Board stating that our application should not be related to Braniff's position and we repeated our request for early hearing.

Status in Colombia

1) We wrote Dr. Latorre in February, ABS 11353, asking whether the time had come to file an application for Bogota route in Colombia.

2) In his ABS 13021 he replied that the time for filing seemed appropriate but that in earlier conversations with the DAC, Senor Wolton and Major Escandon had stated that we should apply for a new route Balboa [fol. 5182] Bogota Quito Guayaquil instead of an extension which would include Bogota in our present Balboa Cali Quito Guayaquil route.

3) In our ABS 11382 (March 17th) we explained that practical considerations made it important to Panagra to have Bogota added to its present route instead of establishing a new route. We said that if Cali and Bogota could not receive service on the same route (although not necessarily the same trips), Panagra might have to schedule duplicating trips over these sectors or serve the two cities on alternate trips and thereby deprive them of maximum potential service. We also gave other reasons in favor of the "extension" approach.

4) In Dr. Latorre's ABS 13040 (March 25th) he stated that in a later conference, Escandon, told him that Colombia (the DAC) was not disposed to act on any route applications until the bilateral was negotiated, and that if we

[fol. 5170]

W. R. GRACE AND COMPANY EXHIBIT 146

GRACE Y CIA. (CHILE) S. A.

JTK TRIP SERIES #2

SANTIAGO, December 9, 1949
(Dictated on "El Interamericano"
between Lima and Santiago, Dec. 9)

[Handwritten notation—WSH\ —HJR\ —ABS\ —BH\ —HLC\]

[Stamp—DEC 13 REC'D.]

Mr. J. P. Grace, Jr.
NEW YORK, N. Y.

Att: Mr. A. P. Shea

Dear Peter:

PANAGRA

On Wednesday I discussed with Latorre the question of Bogota and he confirmed that the indication had been made to the Colombian Government as to Panagra's interest.

When I left Bogota on Thursday morning for Lima, I found a clipping in the "Tiempo" which I enclose herewith.

It makes me a little nervous to see all the reference therein to Braniff and Panair; it sounds very much like the remarks which Healey made at Rickenbacker's cocktail party in Bogota which I mentioned to you at the Canal, wherein Healey indicated Avianca's opposition to Panagra going to Bogota and his opining that Eastern would more likely go there than Panagra.

Fortunately, Jim Stebbins did a good job in developing Welton o[illegible] Colombian C.A.B., referred to in the clipping, and maybe my fears in connection with this matter are groundless, but I felt you would want to have Latorre report on this clipping, so I am sending him a copy of this letter and asking him to write to you about it.

Yours very truly,

(Sgd.) KIRBY

1 Enclosure
cc: Dr. Jorge Hernan Latorre

[fol. 5171]

W. R. GRACE AND COMPANY EXHIBIT 147

TRANSLATION

"EL TIEMPO" – BOGOTA – DECEMBER 8, 1947

NORTH AMERICAN AVIATION COMPANIES WILL EXTEND THEIR SERVICE TO BOGOTA

INFORMAL CONVERSATIONS WITH BRANIFF AND PAN AMERICAN AIRWAYS

FOR THE MOMENT THE NATIONALIZATION OF AIRPORTS IS DIFFICULT

From information from civil aeronautics sources it is known that presently informal conversations are taking place with the representatives of the North American aviation companies of Braniff Airways and Pan American Airways with the object of arriving at an understanding to grant permission to said companies to extend their commercial lines to the capital of the Republics.

The foregoing disposition, when approved, will require not only a detailed study of civil aeronautics but the corresponding diplomatic arrangement between the Governments of Colombia and the United States which would change the terms of the present aviation agreement between the two countries, which as is known, is the Kellogg Olaya agreement which was signed by the President of Colombia, Dr. Enrique Olaya Herrera and Mr. Kellogg, American Secretary of State, in 1929 when the Colombian American aviation pact was signed which still governs the relations of the 2 countries in matters of aviation regulations.

Initial Studies:

In regard to the future agreement which may be concluded between the U.S. and Colombia on aviation matters, we have already advised fully and clearly Mr. Alejandro [fol. 5172] Perez Welton, present Sub Director of Aero-

carrier, as the result of the lack or delay of affirmative action on the part of its own Government, in the position of competing under less favorable conditions than foreign flag carriers and of being limited by its own Government to the operation of a service less attractive and less effective than that which is permitted to and offered by foreign flag carriers.

I cannot urge too strongly the urgent necessity of immediate action by the appropriate authorities of the United States Government (a) to approve the perfectly practical arrangement permitting Panagra aircraft to offer one-plane service to and from New York over Panagra and Pan American routes, and (b) to defer the granting of the aforementioned permits to foreign flag carriers, at least until the U. S. flag carrier (Panagra-Pan American) is permitted to compete with them on equal terms.

Yours very truly,

Douglas Campbell

[fol. 5195]

W. R. Grace and Company Exhibit 156

JOCANTIS 17
february 25th

from SHEA(lima)
february 26th 1948
reed 9AM

1 17
2 your letter
3 27
4 two
5 most important
6 factors
7 increased
8 next word change con:
9 PIA
10 passenger movement ????
11 since november
12 were

13 suspension
14 DC-6s
15 and
16 local currency
17 collection-s
18 sentence
19 importance (of)
20 DC-6
21 suspension
22 shown by
23 following
24 next word change con:
25 PIA
26 movement
27 november 1947
28 199
29 december 1947
30 526
31 january 1948
32 524
33 february
34 through
35 23rd
36 489
37 as compared (with/to)
38 panagra
39 main
40 line
41 movement
42 balboa
43 santiago
44 sector-s
45 3678
46 3848
47 3303
48 2425
49 respectively
50 sentence
51 with respect to
52 february
53 total

ways Corporation and W. R. Grace & Company, hereinafter respectively called Pan American and Grace, and has been so owned since the organization of the joint enterprise in 1929; that Pan American is the parent corporation of the gigantic Pan American World Airways system of which Pan American Airways, Inc., is the principal operating subsidiary; and Grace is the parent corporation of the extensive Grace enterprises, which include banking, mining, shipping, exporting and importing on the west coast of South America.

III

That in 1941, Grace filed an application (Docket No. 707) for an extension of Panagra's certificated routes so as to provide a terminus in the United States. In April 1942, Grace filed with this Board (Docket No. 744) a letter with an accompanying statement of facts making certain charges against Pan American as to how Pan American had by its 50% stock control blocked and retarded the proper development of Panagra. Pan American answered (in Docket No. 744) in January 1943 making certain counter-charges against Grace. On September 10, 1942, the Board upon its own motion instituted a proceeding (Docket No. 779) to determine whether the public convenience and necessity require that Panagra's certificated routes be extended so as to provide a terminus in the United States; that after hearing and consideration this Board decided it did not have jurisdiction to determine the issues thus presented. Grace duly appealed to the Circuit Court of Appeals for the Second Circuit, which on January 28, 1946, remanded the case to the Board: "To decide whether Panagra should be treated as applying for the extension; and if that turns out to be true, whether the public convenience and necessity require the extension to be granted." Pan American duly appealed to the Supreme Court of the United States where writ of certiorari was granted on June 10, 1946, and at the present time said case is pending undetermined.

[fol. 5189]

IV.

That the facts and circumstances surrounding the agreements (Exhibits A and B to the petition of Pan American

Airways, Inc., and the terms and conditions of said agreements, and the arrangements proposed to be established thereunder, are such as to give rise to important questions under the antitrust laws and the Civil Aeronautics Act as to the legality and propriety of the said agreements and arrangements, and as to the effect thereof upon the public interest, especially with respect to the maintenance of sound competitive conditions in air transportation, and as to the effects thereof upon the authority and jurisdiction of this Board to regulate air transportation and to prescribe geographical limitations required to be observed by air carriers operating under and by virtue of certificates issued by this Board containing the said limitations, and as to the effect thereof upon the legal rights and interests of duly certificated carriers other than those parties to the said agreements and arrangements.

V

That because of their property interests the private parties to this proceeding are not primarily concerned with the substantial public issues involved; that the Department of Justice is the governmental agency primarily charged with the duty of dealing with matters relating to monopolies and restraints of trade and such agreements as may tend to the establishment or maintenance of such restraints and monopolies; and that the ends of justice and orderly administration of law require that your petitioner, by reason of the important public issues involved in this proceeding and your petitioner's substantial interest therein, be permitted to participate in the full and fair hearings required for the proper determination of such issues and that your petitioner be made a party to this proceeding.

WHEREFORE, your petitioner prays leave to intervene and be treated as a party hereto, with the right to have [fol. 5190] notice of all proceedings herein, and that hearings be held herein, and that your petitioner be allowed to appear and participate in all proceedings herein, including the right to be present at the taking of testimony, to pro-

XPEDITE RECONSIDERATION OF ITS ORDER-
ERIAL, NO. E-5581, AUGUST 8, 1951, AND GRANT
ANAGRAS APPLICATION FOR AN EXEMPTION,
S REQUESTED IN OUR PETITION FOR RECON
IDERATION, AUGUST 27, 1951

ANDREW B. SHEA, PRESIDENT
PAN AMERICAN-GRACE AIRWAYS INC.

(MESSRS SHEA CAMPBELL CLARK
(CABLE A.C

Vol. 5186]

W. R. GRACE AND COMPANY EXHIBIT 154

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 2423

In the Matter of

An Agreement Between

PAN AMERICAN AIRWAYS, INC.

and

PAN AMERICAN-GRACE AIRWAYS, INC.

Dated July 30, 1946.

PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

WENDELL BERGE
Assistant Attorney General

JAMES E. KILDAY

WILLIAM D. MCFARLANE

EDWARD DUMBAULD

EDWARD J. HICKEY, JR.
Special Assistants to the Attorney General

[fol. 5187] BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 242

In the Matter of

An Agreement Between

PAN AMERICAN AIRWAYS, INC.,

and

PAN AMERICAN-GRACE AIRWAYS, INC.

Dated July 30, 1946

PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

Comes now your petitioner, the Department of Justice, and respectfully represents that it has a substantial interest in the matters and controversies in the above-entitled proceeding and desires to intervene in and become a party to said proceeding and for ground of the proposed intervention says:

I

That the Department of Justice is the governmental agency upon which rests the duty and responsibility for the enforcement of the federal antitrust laws; that the federal antitrust laws are applicable to carriers for hire engaged in interstate and foreign commerce; and that your petitioner is concerned with the agreements between such air carriers which may restrain competition or tend to establish a monopoly.

II

That your petitioner is informed that Pan American-Grace Airways, Inc., hereinafter referred to as Panagra, which operates an airline from the Canal Zone to Buenos Aires via the west coast of South America, and otherwise, [fol. 5188] is now owned 50% each by Pan American Air-

94 specific
95 question
96 one
97 while
98 beneficial
99 effect on
100 february 1st
101 14th
102 movement
103 of
104 acceptance
105 currency
106 to
107 new york
108 not apparent
109 for . . . reasons
[fol. 5197]
110 given
111 above
112 I am
113 convinced
114 had
115 this
116 step
117 not been
118 taken
119 panagra
120 movement
121 would have
122 shown
123 much
124 sharper
125 decline ????
126 and
127 furthermore
128 that not
129 only
130 is it
131 helping
132 maintain
133 our

approved Through Flight Agreement provides for this service as soon as Pan American's route is extended to cover the Miami-New York sector.

Although the hearings on the Pan American Domestic Route proceeding took place some 15 months ago, no decision has been rendered and, in the meantime, certain developments have taken and are taking place which greatly impair Panagra's position not only as a commercial enterprise, but as an instrument of United States policy in South America.

[Tol. 5193]

(1) Peruvian International Airways has been granted permits as a Peruvian Company which enable it to offer one-plane through service between New York and Washington and Peru and Chile. It has actually been operating such a service for several months. Through service between these points without change of planes has been the keynote of all their advertising, and it is very effective.

(2) The Colombian national Company, Avianca, has now applied for a permit to operate its airline from Colombia through to New York. Since Avianca also serves Quito and Guayaquil, Ecuador, the granting of such a permit would enable it immediately to provide one-plane service between New York and a point as far south as Guayaquil, Ecuador, one of Panagra's principal points.

(3) In connection with bilateral negotiations which are being conducted with the Dutch Government, the latter have requested a route New York-Curacao; however, it is obvious that this is merely to facilitate the real plan which is to operate New York-Curacao-Ecuador-Peru-Chile-Argentina. A high official of the Dutch airline KLM has recently stated to the undersigned that they plan to operate Curacao-Ecuador-Peru-Chile, and has requested the use of some of Panagra's facilities. There are also very definite indications that they plan to make a survey of a portion of this route during the present week.

(4) In the course of current negotiations for a modification of the bilateral agreement between Great Britain and the United States, the former have requested a non-stop route from New York to Jamaica. British South American Airways is already operating Jamaica-Lima-Santiago-Buenos Aires and it is obvious that the New York-Jamaica sector would be availed of to operate through one-plane services between New York and the points mentioned.

Apart from the above, extension to the south by the Venezuelan Company LAV, already operating directly Venezuela-Cuba-New York, and the proposed operations of FAMA from Argentina to a New York terminus can be expected to affect the general picture substantially.

Even if the Miami-New York segment of CAB Docket 1803 had already been approved and Panagra aircraft were already operating over Pan American and Panagra routes between New York, the West coast of South America, and Argentina, it would not, in my opinion, be in the public interest to permit foreign air carriers to operate over the same or paralleling route. This route, as you know, is one of relatively low traffic density and, while it is susceptible of gradual development, the introduction of numerous air lines to compete with each other in this thin market can only result in making the U. S. flag carrier more and more dependent upon large subsidies. The present traffic movement falls considerably short of filling an average of even one 50-passenger plane per day.

[fol. 5194] But to grant this facility for providing one-plane service between New York and the West coast of South America to foreign flag carriers *before* the U. S. flag carrier combination (Panagra-Pan American) is permitted to compete on equal terms with them, does not, in my opinion, make sense from the standpoint of either United States air policy or of United States overall western hemisphere policy. This situation, which already exists with respect to Peruvian International Airways, and which the authorization of the permits requested by Aviança, the Dutch, and the British would greatly aggravate, places the U. S. flag

[fol. 5196]

54 movement
55 somewhat
56 down
57 and
58 effect
59 panagra
60 change in (of)
61 in
62 policy-ies
63 currency
64 collection
65 not.
66 reflected
67 in
68 result
69 through
70 february 14th
71 because
72 change-s
73 not made ????
74 in
75 santiago
76 until
77 february 16th
78 and
79 panagra
80 tariff
81 increase-s
82 february 1st
83 undoubted-ly
84 caused
85 some
86 loss-es
87 new
88 booking-s
89 to
90 next word change con:
91 PIA
92 sentence
93 referring to your ????

wished to serve Bogota, we should apply through diplomatic channels.

5) In our ARS 11302 (March 29th) we stated that our serving Bogota should not be considered as creating a new international service in Colombia. We merely wished an extension on a long existing international service provided by Panagra in Colombia. We requested again that he file Panagra's application with the DAC. We followed this up with PG #10 dated April 20th.

6) In his PG 53 (May 12th) Dr. Latorre said he had visited Escandon again and that this time Escandon said he was willing to support our application but requested Latorre to see the President of the National Council of Aeronautics who is also the Minister of War. Escandon said he would support our application if the Minister of War agreed to its being presented.

[illegible] 7) In his PG #84 (dated May 30th) Dr. Latorre said that he had discussed the matter with the Minister of War and that the Minister had said it would be difficult for the government to pass on our request before deciding questions of general policy relating to the requests of other companies to operate to Bogota. The other companies mentioned were Pan American, Braniff, Eastern and certain European lines such as KLM and Air France. He also mentioned Avianca's general opposition to opening up Bogota. The Minister finally agreed that he was in favor of opening Bogota's International Airport but that he would have to take up the matter of our request with Hoyos, the President of Avianca, as well as again with Escandon. Both Escandon and Hoyos were away during June and as the matter now stands, Dr. Latorre is to take up the matter again with Escandon on his return from the ICAO meeting at Montreal. This meeting is of course now over and we are wondering what progress Dr. Latorre has made. One further complication mentioned by the Minister of War was whether the Ospina Perez administration would define questions of international air policy or whether they would leave such questions to the new administration.

5) In summary then, it seems that the Minister of War and the DAC seem to feel that a mere extension of our route would be satisfactory to them. The question is whether our application will be permitted to become involved in the broad question of international service to Bogota. It is our hope of course that Dr. Latorre will be able to obtain permission for Panagra without awaiting the solution of this larger question.

H. L. C.
H. L. C.

(fol. 5184)

W. R. GRACE AND COMPANY EXHIBIT 153

XXX

W R GRACE & CO

NL

HONORABLE D W NYROP, CHAIRMAN
CIVIL AERONAUTICS BOARD
WASHINGTON D C

8 PM WU HFP P 32
AUG 30 1951

WE UNDERSTAND THAT AGREEMENT HAS BEEN REACHED ON THE TERMS OF THE UNITED STATES COLOMBIAN BILATERAL AND THAT ALL FORMALITIES ARE EXPECTED TO BE COMPLETED SHORTLY. AT THAT TIME, IT WILL BECOME POSSIBLE FOR AMERICAN FLAG CARRIERS TO SERVE BOGOTA DIRECTLY, AND BRANIFF WILL HOLD AUTHORITY TO DO SO. PANAGRA THUS FACES THE IMMINENT LOSS OF VIRTUALLY ALL OF ITS BOGOTA TRAFFIC, NOW SERVED BY CONNECTION AT CALI, UNLESS THE BOARD ISSUES AN EXEMPTION PERMITTING PANAGRA TO SERVE BOGOTA. PANAGRA CAN COMPETE EFFECTIVELY FOR THE TRAFFIC IT BUILT UP OVER MORE THAN TWENTY YEARS ONLY IF IT CAN PROVIDE DIRECT SERVICE. ACCORDINGLY, WE REQUEST THAT THE BOARD

duce and to cross-examine witnesses, and to be heard upon brief and at the oral argument, if oral argument is granted

Respectfully submitted.

(Signed) JAMES E. KILDAY

WILLIAM D. MCFARLAND

EDWARD DUMBAULD

EDWARD J. HICKEY, JR.

Special Assistants to the Attorney General.

By direction of:

WENDELL BERGE
Assistant Attorney General

August 8, 1946.

[fol. 5191] JAMES E. KILDAY, being duly sworn deposes and says:

That he is Special Assistant to the Attorney General and is authorized to execute and file the foregoing petition; that he has read and is familiar with the contents thereof; that he intends and desires that in granting or denying the petition herein, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief every statement contained in the instrument is true and no such statement is misleading.

(Signed) JAMES E. KILDAY

Subscribed and sworn to before me this 8th day of August, 1946.

MAY S. SIMPSON
Notary Public

(SEAL)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing petition for leave to intervene has been served on each party to the above-entitled proceeding.

JAMES E. KILDAY

[fol. 5192]

W. R. GRACE AND COMPANY EXHIBIT 155

—Copy—

February 17, 1948

Hon. Norman Armour
Assistant Secretary of State
for Political Affairs
Department of State
Washington 25, D. C.

Dear Sir:

I take the liberty of calling the following matter to your attention because I feel that it is an important item affecting the implementation of United States policy in the western hemisphere.

Since May 31, 1947, the Through Flight Agreement between Pan American Airways and Panagra, which was approved by the Civil Aeronautics Board on May 7, 1947 (Docket 2423), has been functioning smoothly and has enabled Panagra aircraft to operate a rapid one-plane through service over the routes of Pan American and Panagra between Miami and the Canal Zone, Ecuador, Peru, Chile and Argentina with adequate connections to other interior points served by Panagra in Colombia, Ecuador, Peru, Bolivia, Argentina and Brazil.

A segment of the so-called Pan American Domestic Route proceeding (CAB Docket 1803) calls for extension of Pan American's routes from Miami to New York, and an affirmative decision on that segment of Pan American's application would immediately enable Pan American and Panagra to offer one-plane service with Panagra aircraft between New York and the principal points mentioned above. The

295 really
296 competitive basis
297 and
298 to be able (to)
299 provide
300 first class
301 saperior
302 service
303 it is
304 of course
305 of utmost importance
306 that
307 panagra
308 be
309 permitted
310 in conjunction (with)
311 panamerican
312 offer
313 through
314 plane
315 service
316 to and from
317 new vork
318 sentence
319 in this connection
320 next word change con:
321 PIA
322 plans
323 start
324 fourth
325 service
326 between
327 new york
328 lima
329 march 5th
330 sentence no
331 result-s
332 apparent
333 from
334 next word change con:

1161 5201
335 PLA
336 recent
337 publicity
338 effort-s
339 as
340 movement
341 balboa
342 lima
343 week ending
344 february 7th
345 68
346 four
347 trips
348 week ending
349 february 14th
350 47
351 week ending
352 february 21st
353 44
354 as compared (with)
355 total
356 their
357 southbound
358 movement
359 this
360 sector
361 january
362 181
363 comparative
364 panagra ???
365 figure-s
366 205
367 179
368 230
369 tot-l
370 614
371 january
372 873
373 four

374 taking into account
375 adverse
376 factor-s
377 existing
378 november
379 through
380 january
381 and
382 apparent
383 improvement-s
384 northbound
385 movement-s
386 last
387 10 days
388 as well as
389 advance
[fol. 5202]
390 booking-s
391 present
392 load
393 factor-s
394 may be
395 expected
396 improve
397 and
398 substantial-ly
399 so
400 with
401 restoration
402 10%
403 service
404 which
405 particularly
406 important
407 buenosaires
408 movement
409 sentence
410 basis
411 all of foregoing

412 I would not
413 recommend
414 any reduction
415 main line
416 frequency ies
417 particularly
418 in view of
419 imminent
420 increase s
421 next word change con:
422 PIA
423 frequency ies
424 and
425 in any case
426 we should
427 allow
428 reasonable length of time
429 observe
430 effect
431 measures
432 recently
433 taken
434 sentence five
435 review of)
436 daily
437 movement
438 last
439 2 months
440 indicate s
441 Sunday
442 movement
443 about the same ???
444 weekdays
[ol 5203]
445 therefore
446 from
447 traffic
448 point of view
449 any day
450 could be
451 selected

215 above
216 figures
217 next word change con:
218 PIA
219 percentages
220 total
[fol. 5199]
221 movement
222 weeks
223 mentioned
224 santiago
225 lima
226 6.7
227 13.5
228 82
229 lima
230 balboa
231 20.8
232 20
233 19
234 percent
235 three
236 it is
237 obvious
238 that
239 competitor-s
240 position
241 has
242 substantial-ly
243 improved
244 in
245 last
246 3 months ????
247 probably
248 for
249 reasons
250 given ???
251 above
252 13/17
253 words
254 and

255 public
256 confidence
257 in operation
258 steadily
259 growing
260 however
261 taking into account
262 passenger movement
263 only
264 operation
265 simply
266 cannot be
267 producing
268 anything
269 but
270 substantial
271 losses
272 sentence with
273 new
274 paragra
275 policy
276 on
277 currency
278 collection s.
279 am
[fol. 5290]
280 hopeful
281 will
282 check
283 further increases
284 and with
285 reestablishment
286 DC-6
287 services
288 may
289 recover
290 some
291 lost
292 grounds
293 but to
294 get on

134 traffic
135 but will
136 result in
137 substantial
138 increase-s
139 at
140 expense-s (of)
141 competition
142 particularly
143 with
144 increase-s (of)
145 next word change con:
146 PIA
147 tariff
148 effective
149 today
150 sentefice
151 thfis is
152 substantiated
153 by
154 following
155 figures
156 northbound
157 DC-4
158 movement
159 panagra
160 next word change con:
161 PIA
162 respective-ly
163 santiago
164 lima
165 week ending
[fol. 5198]
166 february 7th
167 167-12
168 february 14th
169 141-22
170 february 21st
171 180-16
172 lima
173 balboa

174 february 7th
175 160-42
176 february 14th
177 120-30
178 two
179 increase-s ????
180 only
181 february 21st
182 162-38
183 sentence
184 week ending
185 february 14th
186 included
187 carnival
188 holiday-s
189 which
190 affected
191 northbound
192 movement
193 sentence ??
194 panagra
195 advance
196 booking-s
197 santiago
198 lima
199 february 25th
200 29th
201 138
202 march 1st
203 march 7th
204 112
205 lima :
206 balboa
207 february 25th
208 february 29th
209 167
210 march 1st
211 march 7th
212 124
213 two
214 as shown

452 on which
453 competitors
454 not
455 scheduled

MR ROG
$130.20

[fol. 5204]

W. R. GRACE AND COMPANY EXHIBIT 157

November 10, 1948

MEMORANDUM

PANAGRA'S OPERATIONS IN SOUTH AMERICA

History

Panagra (Pan American-Grace Airways, Inc.) is the pioneer airline along the West Coast of South America. Panagra's operations began just over twenty years ago. In September, 1928, it made its first scheduled passenger and mail flight between Lima, Peru and Talara, Peru. As the pioneer airline in the area Panagra had to negotiate operating rights and airmail contracts with each of the governments along its route. It built airports, provided navigational facilities and developed equipment required for operation at the high altitudes necessary to cross the Andes.

Panagra's original route between Lima and Talara, Peru has been expanded until it includes a network of routes totaling more than 8,000 miles. It has used a succession of equipment ranging from its first single engine Fairchild monoplane to its present four-engine 300 mile per hour, Douglas DC-6 aircraft. On its present routes between the Canal Zone and Buenos Aires, Panagra serves eight countries Panama, Colombia, Ecuador, Peru, Bo-
[fol. 5205] livia, Brazil, Chile and Argentina.

In May, 1947, the Civil Aeronautics Board approved an agreement between Panagra and Pan American Airways, Inc. under which it was possible for the first time for Pan

agra to send its planes over the routes of Pan American to a point in the United States. Under that agreement, Panagra has established a daily, through, one plane service between Miami and points on the West Coast of South America and Buenos Aires. South of Balboa it operates several other local and secondary services.

Need for service to New York.

The greatest handicap to Panagra's service has been its inability to reach the East Coast of the United States where the greater part of its traffic to South America is generated. As long ago as October, 1944, W. R. Grace & Co. sought an extension of Panagra's route from Balboa to New York. The route was not granted in that proceeding but the subsequent Through Flight Agreement between Panagra and Pan American made it possible for Panagra's planes to reach New York over Pan American's routes, in the event that Pan American should secure a route between Miami and New York. Pan American's application for such a (tol 5206 route, supported before the Civil Aeronautics Board by Panagra, is presently under consideration by the Board. Until and unless such a route is granted, it will be impossible for Panagra to offer the through one plane service, requested by the traffic to and from New York and Washington. Meanwhile such service is being offered by a foreign flag carrier, Peruvian International Airways, under authorization by the Civil Aeronautics Board.

Competition.

The extent to which Panagra is subject to competition along its South American routes, is frequently underestimated. Competition by foreign national airlines is growing rapidly and is supported by various concessions which are unavailable to Panagra. During its early years, for example, Panagra was the only airline operating across the Andes between Santiago, Chile and Buenos Aires. There Panagra had cabotage rights, the right to carry passengers between local points within Argentina. Argentina has now withdrawn cabotage rights and Panagra is competing for traffic between Santiago and Buenos Aires with two

Argentine airlines, PAMA and ZONDA, and with LAN, a [fol. 5207] Chilean national airline, and British South American Airways. PAMA expects to extend its operations to the United States paralleling Panagra's route to Balboa. North of Santiago to Lima, Panagra competes with LAN, BSAA and Peruvian International Airlines (PIA). In Peru Panagra faces competition from PIA, a company organized by North Americans and in which United States and Canadian nationals hold 70 percent of the outstanding stock, and Faucett Airlines, a local company in which Panagra has minority interest. In Bolivia, competing services are offered by Lloyd Aereo Boliviano, in which Panagra owns a minority interest, and a transport service to be operated by the Bolivian air force is now being organized. In Colombia and Ecuador competitors are AVIANCA, Transandina, and ATECA.

Further competition from the United States was authorized by the Civil Aeronautics Board in 1946 when it certificated Braniff Airways to operate along a route almost parallel to Panagra's. Braniff's service to Lima, Peru as it is now operated is flown directly on Panagra's route from Balboa.

Foreign Exchange

The growing dollar shortage in South America is creating a serious new problem for Panagra. New exchange restric- [fol. 5208] tions are being set up by the governments along the route and local currencies are being devalued. To meet the competition of local airlines it is necessary for Panagra to accept local currencies in payment for transportation. As a result of the restrictions, it is impossible to avoid the accumulation of the devalued local currencies in some countries.

The handling of COD shipments from the United States has become almost impossible because of the difficulties of securing dollars to transmit to shippers. Panagra has had to absorb exchange losses on the local sale of onward transportation over the lines of connecting U.S. domestic carriers whose tickets must be paid for in dollars. An ex-

treme situation had developed in Chile where the government now requires that Panagra sell to it at the official rate of exchange any dollars which Panagra may receive in Chile in payment for its transportation services."

Peruvian Capacity Discussions

At the present time a member of the Civil Aeronautics Board is in Peru to discuss, at the request of the Peruvian government, the capacity being flown into and through Peru [fol. 5209] by United States air carriers. The discussions were initiated by the Peruvian government because of its desire to secure more traffic for PLA, the airline in which Peruvian nations hold a minority stock interest. Panagra has for several years been operating its present number of schedules into Peru. It operates at a competitive disadvantage to PLA because of that line's ability to operate direct one-plane service to both Washington and New York. During the period of its operation, PLA had also steadily increased the frequency of its flights to the U.S.

Panagra takes the firm position that its frequencies, which existed before the signing of the bilateral Air Transport Agreement with Peru, cannot be reduced under that agreement.

[fol. 5210]

W. R. Grace and Company Exhibit 15s

ABS Trip Series
Letter No. 21

New York, February 27, 1948

Andrew B. Shea, Esq.
Lima, Peru

Dear Andy:

Your cables Nos. 17 and 18.

These give us just the kind of information we need.

We have decided not to alter our frequencies, at least for the time being, but to proceed with the idea of daily

service with DC6s. The only mainline schedule change we have in mind is the idea of running two of these flights over the Cutoff nonstop Buenos Aires/Lima/Balboa/Miami and the other five by way of Santiago stopping all or part of them at Guayaquil. This will, of course, reduce Santiago frequencies two times a week but from a traffic angle this seems abundantly justified as the other trip could carry the movement and putting two fast trips on the Buenos Aires service should give us an additional leverage on that large movement. The thing which is still troubling us is that it means giving up two Argentine frequencies so far as Chile is concerned and under the bilaterals, etc. it may be impossible to get these back later on.

We are, of course, all very conscious of the importance of the New York extension and are pressing this in several directions. We expect the Examiners' Report momentarily but, unfortunately, have been expecting it for a long time and the battle will be a long way from finished even if we [fol. 7211] get a favorable recommendation from that quarter which, of course, is by no means certain.

Your point about PIA's fourth trip in relation to the bilateral seems well taken but we are not disposed to press it. We feel that there is too much risk that if we press this here, PIA will press at the other end for reduction of our frequencies. If Shannon is freed of some of the things which are swamping him here, we will try to get him to Lima as you suggest. I would particularly like him to come while you are there, possibly with the idea that at that time the switch of traffic handling to Grace may be consummated. This changeover would be considerably facilitated if you and he were there when it was done.

I had lunch with Slim Faucett yesterday. He said he was having some difficulty with the Board with regard to the management of the company. When he left for this trip he gave instructions that one of his assistants (whose name I do not recall) other than Bentin should run the business while he was gone. Bentin seems to have spiked this with the support of the Board. Slim is very emphatic that the other man is a much more competent manager than Bentin

and I must say I have never been much impressed by the latters performance. Slim seemed to think we may be of some help to him in carrying out his plan. I would appreciate it if you would look into this and if Slim's idea is really sound I should think we might well support him in it as it is of very great importance as you know that he have some really competent assistant coming along who can manage this business.

Sincerely yours,

/s/ HAROLD J ROIG

[fol. 5212] P.S. What I said above about the New York extension was obviously dictated before we had the news contained in my cable No. 21.

[fol. 5213]

W. R. GRACE AND COMPANY EXHIBIT 159

JOCANTIS 21 - to A.B. SHEA (lima) feb 27, 1948

650pm

1 21
2 examiners
3 report
4 Pan American
5 domestic
6 route
7 case
8 recommends
9 lima
10 new york
11 route
12 including
13 stops
14 washington
15 baltimore
16 philadelphia
17 limiting
18 frequencies
19 to those
20 primarily
21 related to

22 international
23 trips
24 all other
25 routes
26 denied
27 sentence
28 advise
29 walker

MR ROIG
$4.77

[fol. 5214]

W. R. GRACE AND COMPANY EXHIBIT 160

Exhibit No. CON-24
CAB Docket No. 3500

STATEMENT OF NEGOTIATIONS RELATING TO AGREEMENTS BETWEEN NATIONAL, PAA, PANAGRA, AND W. R. GRACE & CO.

I. Summer of 1948

During the summer of 1948 (probably in August) Mr. Baker of National had one or two talks with Mr. Trippe as to the acquisition by PAA of a substantial amount of the stock of National. It is Mr. Baker's recollection that he took the initiative in seeking out Mr. Trippe. Most of the discussion related to Pan American's acquiring sufficient National stock so that Pan American would own something like eighty percent (80%) of the stock of National. Along with this would come agreements for the operation of PAA and Panagra equipment over National's routes. There was a good deal of discussion as to whether payment for the National stock should be made in cash or in Pan American stock, and, if the latter, whether the Pan American stock should be taken at its book value, at its market value or at some intermediate figure. There was also question as to how the National stock should be valued. In general, Mr. Baker's position was that the National

stock should be taken at its book value plus an allowance (fol. 5215) for certain assets which he believed to be undervalued on National's balance sheet. Whereas the Pan American stock should be taken at, or below its market value. Mr. Trippe, on the other hand, favored a book value basis for both sides. No conclusions were reached as a result of these discussions.

H. December, 1948 and January, 1949

On December 15, 1948, Mr. Baker addressed a letter to Mr. Roig proposing an interchange of equipment between Panagra and National at Miami. (Exhibit NAL-97, p. 1). A copy of this letter was sent to Mr. Trippe. Similar letters were sent by Mr. Baker to several other airlines.

Mr. Roig discussed with the Pan American representatives on the Board of Panagra the response he proposed to make to Mr. Baker's letter to him. Mr. Roig's letter, dated January 6, is reproduced in Exhibit CON-20, p. 3. On January 5, Pan American made a response on its own account, referring Mr. Baker to the recommendation of the CAB Examiner that PAA be authorized to connect Miami with points in the Northeastern United States and emphasizing the Latin American points served by PAA itself through the Miami gateway for which through service was required. (fol. 5216)

Shortly after sending its letter of January 5, Pan American received Mr. Baker's telegram of that day reading:

> "Morrison tells me that you are willing to discuss possibility of interchange agreement. When and where can we get together. Regards."

Mr. Trippe answered Mr. Baker's telegram as follows:

> "Received your telegram after sending my letter January 5. Cannot believe that in view of our different routes radiating from Miami and other regions mere interchange agreement would in any way meet our problem. However, I am always glad to see you in New York for discussion any matters of mutual interest. Regards."

Mr. Baker's response to this telegram was a letter dated January 14, 1949, set forth in Exhibit CON-20, p. 6.

On January 17, 1949, Mr. Baker and Mr. Scott came to New York and met with Mr. Trippe at his home. This meeting was followed by two long conferences on the following day, January 18, one in the afternoon and another (fol. 5217) in the evening. These conferences were attended by Messrs. Trippe, Dean, Friendly, Baker, Scott, Thomas and Fell. Mr. Thomas is a Director of National and both he and Mr. Fell are partners in Lehman Bros. which acted as underwriters in the public offering of National's stock. The discussions included the operation of through and shuttle flights over National's route by Panagra and PAA equipment, and the purchase of a 45% stock interest in National by PAA.

PAA's general position was as follows:

1. The need for through service between the Northeastern United States and Latin America by way of the Miami gateway was not limited to the points on Panagra's route (although it was clearly stated by PAA that any agreement must include an extension of the Panagra Through Flight Agreement and that no agreement would be made by PAA without Panagra's consent), but included other areas in Latin America served by PAA. Such through service was required for the convenience of travelers and shippers, the development of traffic, and the meeting of foreign competition.

(fol. 5218) 2. In addition to these through flights with Panagra and PAA equipment, PAA required, as a means of improving the economy of its operations, a facility for getting the planes based in New York to the Miami overhaul base without ferrying. This could not be done simply on international flights both because the number of such flights would not be sufficient (at least if Havana were excluded as a destination and particularly if the AOA acquisition was approved) and because the Boeing equipment was too large both trafficwise and airportwise for operation on certain of the Latin American routes through Miami.

3. The Miami-New York operation would constitute such a vital part of Pan American's business from both a traffic and an operational standpoint that it could not rely on a mere contractual arrangement with National. Pan American felt it should have a sufficient interest in National so that its views with respect to management problems, while not controlling, would be given very great weight.

4. PAA insisted also that it was entitled to have weight given to its position in its Domestic-Route Case. Examiner Madden, the only disinterested person to review the [illegible] question, had upheld PAA's position and had recommended that PAA be certificated for operations over the New York-Miami route with a restriction confining such operation to flights "primarily providing international service". PAA took the position that in the long run it was not going to be blocked off at Miami from access to the true origin and destination of the bulk of the travel to Latin America and that if PAA was to make an agreement that would relieve National of PAA's competition between Miami and New York, it was fair that PAA should become a substantial owner in National. It emphasized also as a further reason for such stock participation that the Latin American traffic which would be handled by National under an interchange agreement would be largely traffic which had been developed by PAA through its advertising and sales efforts, both in Latin America and in the United States and that PAA was entitled to profit therefrom.

National's position on these subjects was substantially as follows:

1. Mr. Baker questioned the volume of through traffic between the Northeast and Latin America flowing through [illegible] Miami, other than to points on Panagra's route. If there was enough such traffic, he would be willing to have through flights to handle it, but he was unwilling to make any commitment on the subject.

2. Mr. Baker welcomed the idea of shuttle flights between New York and Miami with PAA equipment, notably the Boeings, during the high traffic season, but was unwilling to make any commitment with respect to the off-season.

3. Mr. Baker did not specifically oppose the acquisition by PAA of stock in National up to say 45% of the total stock. However, he insisted that the National stock should be appraised at book value plus an allowance for items which he believed would increase the book value, while, if payment was made in Pan American stock, this should be taken at market value with a discount in the approximate amount of the underwriting commissions which Pan American would have to pay on the sale of so large a block.

The meeting broke up in a friendly spirit, Mr. Trippe and Mr. Baker both proceeding to Washington to attend the Presidential inauguration ceremonies, but without any
fol. 5221 agreement having been reached. In the light of this, it was felt necessary to reply to Mr. Baker's letter of January 14, 1949, since it was believed that all these letters would go into the record in Docket 3500. This was done in a letter dated January 25, 1949, pointing out the volume of traffic between the Northeastern United States and points in Latin America other than those on Panagra's route.

On January 21, 1949, Mr. Trippe had lunch with Mr. Peter Grace and advised Mr. Grace of the negotiations which had been had with Mr. Baker. This talk and assimultaneous meeting which Mr. Roig had with Mr. Baker in Washington, in which Mr. Baker informed Mr. Roig of the National PAA negotiations, led to a meeting on Wednesday, January 26, 1949, between Messrs. Dean and Friendly on behalf of PAA and Messrs. Roig and Shea on behalf of W.R. Grace & Co. Mr. Roig began the meeting by stating that he felt that the delay in Pan American's Domestic Route Case arising from Docket 3500 called for the consideration of alternative methods of getting Panagra's through flight into New York. Dean and Friendly said that while they continued to believe that the acquisition of
fol. 5222 Miami-New York rights by PAA would be by far the most satisfactory method of solving PAA's and Panagra's problems, PAA likewise had recognized the desirability of exploring alternatives and, as Mr. Grace had been informed, had had talks with Baker which, if any

progress had been made, would have been brought to Panagra for its consent. Mr. Rolz expressed the hope that negotiations with Baker but said he thought Panagra should have a seat at the table. Dean and Friendly said they could not see the merit of this position. Under the Through Flight Agreement, it was PAA's responsibility to do what it could to get the right to fly to New York. Once PAA had gotten such a route, Panagra would have had the right to have its airplanes flown over this route, but the entire financial interest in the route was to be that of PAA and not of Panagra. If developments had made it desirable to explore alternative arrangements for getting the right to operate between Miami and New York, which Mr. Rolz agreed was the case, PAA's obligation was to see that Panagra was protected to the same extent as Panagra would have been had PAA gotten the route in its own name, but there was no obligation to allow Panagra or Grace any ownership interest in respect of the route. Dean and Friendly assured Rolz and Shea that in any future negotiations between PAA and Baker, they would continue to insist on the operation of Panagra's aircraft between Miami and New York being provided for, and also that PAA would not enter into any such arrangement with National except after fully advising Panagra and making sure that Panagra was satisfied, but they were unwilling to go beyond this.

On January 24 Mr. Trippe was in telephone contact with Mr. Baker and, with Mr. Baker's permission, with Mr. Scott. These telephone conversations led to Mr. Scott's letter of January 24, 1948 stating that he would recommend to the Board of Directors of National an arrangement under which Pan American would acquire 174,000 shares of National stock for cash at $50.50 a share or a price equivalent to 90% of the average daily closing price of National stock from January 1, 1948 to the day preceding the date of delivery and payment, whichever was greater. National would also agree to sell additional stock to PAA sufficient so that PAA would own 45% of the total outstanding stock. In the case of this latter sale, the National stock was to be taken at book value, plus upward adjustments and payment was

to be made in cash or in PAA stock at 90% of its market
fol. 5224 value for 60 days prior to the date of delivery. This memorandum also called for interchange agreements "where the same shall be mutually advantageous," these to include Panagra, the leasing of flight equipment "where the same shall be mutually advantageous," and joint use of facilities "where the same shall be mutually advantageous." Mr. Trippe phoned Mr. Scott that this memorandum seemed to be a considerable advance toward an agreement and this in turn appears to have led to Mr. Baker's wire of January 26:

> "Talked with Scott. Suggest you forward memorandum of your proposal for discussion with our Directors Monday."

Shortly after this Mr. Baker and Mr. Scott arrived in New York. During the morning of January 27 they met with Messrs. Grace, Roig and Shea. Baker outlined the course of the negotiations with PAA and stated he believed it would be advisable for Panagra or Grace to have a stock interest in National. He felt that a financial interest on the part of all companies to the proposed interchange was essential to make the interchange work effectively. Grace, Roig and Shea agreed that such financial participation was desirable and various proposals were discussed.

fol. 5225 Mr. Baker and Mr. Scott met with Messrs. Trippe, Dean and Friendly on the afternoon of the same day. They stated that they had come from a meeting with W.R. Grace and Co. and indicated that they were no longer willing to go forward on the basis outlined in Mr. Scott's memorandum of January 24. Their proposal was that some 48% of National stock should be acquired but that this should be divided approximately half to Pan American and half to Panagra, or in the alternative, somewhat more than half to PAA and somewhat less than half to W.R. Grace & Co. The PAA representatives said that this represented a complete change in the proposal; that they had no objection to W.R. Grace & Co. acquiring stock in National if such was desired, but that this should be over and above the 45% which it had been agreed PAA should have.

[fol. 5231] of the detailed agreements to carry this out. A number of points of difficulty arose, such as the hours when schedules should be operated, the extent to which PAA and Panagra had the right to "put" schedules to National, the mechanics for making PAA stock available as payment of the purchase price in the event of the exercise of its option in a manner consistent with the provisions of the Securities Act, etc. After various meetings in New York, it was decided that the best way in which to bring matters to a conclusion was to have a general meeting in Miami. Accordingly, Messrs. Grace, Shea, Hayes, MacElwain, Dean and Friendly went to Miami early in May to meet with Messrs. Baker, Scott, Cross and others representing National. As a result of three days' work between May 5 and 7, substantially final drafts were prepared. These were taken to New York for printing and were executed on May 11.

[fol. 5232]

W. R. Grace and Company Exhibit 161

(Letterhead of Loftin, Anderson, Scott, McCarthy & Preston, Miami 6, Florida)

8883

January 24, 1949

Mr. Juan T. Trippe, President
Pan American World Airways System
Chrysler Building
135 East 42nd Street
New York 17, N. Y.

Dear Mr. Trippe:

The attached memorandum is an outline of an arrangement which I would be willing to recommend to the Board of National. With kindest personal regards, I am

Very sincerely,

/s/ Paul R. Scott

PRS:mc
Enclosure

COPY

[fol. 5233] PAA will purchase 174,000 shares of NAL's unissued stock for cash at $6.50 per share, or at a price per share equivalent to 90 percent of the average of the daily closing price of NAL on the New York Stock Exchange from January 1, 1948 to the day preceding the date of delivery and payment, whichever is the greater. Delivery and payment thereof to be made as soon as a contract can be prepared and signed by PAA and NAL formalizing the following agreement:

(a) NAL to increase its authorized shares to 1,500,000. Subject to the approval of the CAB, PAA agrees to purchase additional shares of NAL so that immediately after the 174,000 shares it will own 45% of the total outstanding stock of NAL after such additional purchases. NAL now has pending an application for increased mail pay retroactive to July 14, 1947. On the last day of the month in which the CAB shall finally determine said application and NAL shall accept such determination, the adjusted book value of NAL's stock shall be determined. In such determination, flight equipment, including spares, and real estate shall be valued at then current market values. If the parties cannot agree on market values, the same shall be fixed by arbitration. Said adjusted book value shall be arrived at within sixty days from the last day of the month in which NAL's pending mail pay application shall be finally determined and accepted. Within ten days after NAL's adjusted book value shall have been so determined, PAA shall make payment for said additional shares at a price per share equal to said adjusted book value, either in cash or at the option of [fol. 5234] PAA by delivery to NAL of PAA shares at a price per share equal to 90 percent of the average daily closing price on the New York Stock Exchange for sixty days prior to the date of delivery.

(b) Subject to the approval of the CAB, interchange agreements between PAA and NAL, where the same shall be mutually advantageous; it is understood that such equipment interchange shall include Panagra

This proposal was considered by the Directors of W.R. Grace & Co. and the decision reached to accept the stock purchase.

III. March, 1949

On March 2 the offer of stock of National was accepted by W.R. Grace & Co. (Exhibit No. CAB 20, p. 229).

On the same day, Mr. Peter Grace called on Mr. Trippe and advised him of the execution of the agreement of February 28, 1949 between W.R. Grace & Co. and National, (of 5228) and of Grace's exercise of its option to purchase 174,000 shares of National's stock at $5.50 per share. The other terms of the agreement of February 28 were discussed briefly, and Mr. Trippe then stated to Mr. Grace that PAA would have to consider the situation thus created in the light of its own interests and the obligations of PAA and Grace under the Through Flight Agreement.

PAA decided that, before coming to any conclusion whether to endeavor to secure a modification of the February 28 agreement that would make this more acceptable from PAA's standpoint, the possibilities of an arrangement with Eastern should be fully explored and negotiations to that end were instituted.

Meanwhile, the month of March was passing. When PAA allowed the March 10 deadline to pass without taking any action, the Grace representatives indicated they would insist on the matter being considered by the Panagra Board prior to the Panagra deadline of March 30. A meeting was held about March 23 between Messrs. Dean, Friendly, Rouse and Sloan to discuss the matter. Dean and Friendly inquired, without commitment, whether there would be any interest on the part of National and Grace in discussing a (or 5229) modification of the February 28 agreement in the following particulars:

1. The ratio of PAA's stock to Grace's stock should be 50-50, instead of 24-24;

2. PAA would have the right to acquire not merely the higher priced stock as provided in the February 28 agree-

ment, but 30,488 of the 174,000 shares which Grace had bought at $5.50.

3. The PAA National interchange agreement should include, in addition to a through flight proceeding over one of PAA's international routes, twice daily shuttle flights between New York and Miami.

4. The term of the interchange agreements should be reduced from the 99 years provided in the Grace-National Agreement to July 1, 1953, subject to extension for seven years, in the case of the PAA agreement if PAA exercised its option to purchase National stock, and in the case of the Panagra agreement if both PAA and Grace exercised their options. Those options were to continue to July 1, 1953.

5. PAA was to have the right to pay for its optioned National stock in PAA stock at market value.

tol. 5/25/51 Mr. Ross characterized this as a constructive proposal and said they would talk about it with their associates and with National. Shortly after this, Messrs. Shea and Grace departed for Miami to negotiate with National. Commencing with the latter part of the week, there was a good deal of proposing and counter proposing as to various points.

A Directors' meeting of Panagra had been called for Tuesday, March 29. The parties were still apart on certain matters, such as who should have the right to determine whether Panagra would extend its interchange agreement, the length of the options, and National's demand that Pan American stock taken in payment for National stock should be valued by bona fide market. However, after discussions on March 29, there appeared to be sufficient basis of agreement so that instead of holding the Directors' meeting, Trippe, Dean, Grace, Ross and Shea proceeded to Washington to meet with Baker, Cross, Fogarty and Gesell. As a result of further negotiations, an agreement was signed early in the morning of March 30.

Subsequent to the execution of the March 30 agreement, counsel for the various parties set about the preparation

(c) Subject to the approval of the CAB, agreements for the leasing of flight equipment, where the same shall be mutually advantageous.

(d) Joint use of facilities, where the same shall be mutually advantageous.

(e) On approval of the CAB, NAL agrees that five of its eleven Directors shall be nominees of PAA.

[fol. 5235]

W. R. GRACE AND COMPANY EXHIBIT 162

= 887

February 28, 1949

W. R. Grace & Co.
7 Hanover Square
New York 5, N.Y.

Dear Sirs:

Referring to our letter to Pan American-Grace Airways of December 15, 1948, their reply of January 26, 1949 and ours of January 14, 1949 and confirming our recent conversations with you, we make you the following offer, subject to the provisions of paragraph 8 hereof and approval of the Civil Aeronautics Board where required:

1. We will enter into an "equipment interchange" agreement with Pan American-Grace Airways (Panagra) in the form attached hereto and into any further agreements which may be necessary to make such "equipment interchange" agreement operate, provided Panagra executes such "equipment interchange" agreement not later than March 30, 1949.

2. Provided we enter into the above "equipment interchange" agreement with Panagra we are also prepared to enter into a substantially similar "equipment interchange" agreement with Pan American Airways, Inc. (PAA) provided PAA shall notify us in writing not later than March 10, 1949 of its intention to execute such agreement and

provided we can agree with PAA on the terms of such agreement not later than March 30, 1949.

3. Until the "equipment interchange" agreement or agreements referred to above have been approved or disapproved by the Civil Aeronautics Board, we will not enter into any "equipment interchange" agreement providing for the operation of airplanes over our certificated routes or any part thereof with any other carrier operating in South or Central America, except interchange agreements which would provide only through service between cities on National's routes and cities located within the continental United States on the domestic routes of such other carriers.

4. We hereby grant you an option to purchase 174,000 shares of our stock at $5.50 per share, provided you exercise the same by payment in cash not later than March 30, 1949. Upon the approval by the Civil Aeronautics Board of the "equipment interchange" agreement referred to above between Panagra and ourselves, we will sell to you and you will buy from us 346,000 shares (or 172,000 shares in the [fol. 5236] event you purchase the 174,000 shares mentioned above) of our stock at the book value thereof (as agreed to by the parties or in the event of failure to agree then as determined by independent auditors mutually agreed upon) as of the last day of the month in which the Civil Aeronautics Board shall approve the "equipment interchange" agreement between Panagra and ourselves and the acquisition of said stock by you provided that:

(a) National now has pending an application for increased mail pay retroactive to July 14, 1947. In the event said retroactive mail pay shall not have been determined until after the purchase of said shares you agree, on such determination, and upon the payment of such retroactive mail pay to National, to pay to National an additional amount equal to the value added to said shares by such retroactive mail pay up to the date of the valuation of said shares.

(b) National is considering the sale of its real estate and buildings at Miami. If said real estate and buildings at Miami are sold after the date of valuation of said

9. If such commitments as you now have so permit, we will appoint you and your subsidiaries as our exclusive general sales agents in Colombia, Ecuador, Peru, Bolivia, and Chile and if such commitments so permit, you will accept such appointment.

10. It is understood that nothing herein is to be construed as restricting Panagra from continuing to maintain its present position in Docket Nos. 1861 and 2500 and in [fol. 3238] the event of PAA's being awarded the route between Miami and New York Panagra shall have the right at its option upon thirty days' notice to terminate any "equipment interchange" agreement entered into with us pursuant to this offer.

Very truly yours,

NATIONAL AIRLINES, INC.

Osgd) O. T. BAKER
President

[fol. 3239]

W. R. GRACE AND COMPANY EXHIBIT 163

TELETYPE

to COVINGTON, WASHINGTON

oct 19 1950
420PM

following for mr gesell to be delivered to mr verner this afternoon

docket 3500— panagra national panamerican national interchange and collateral agreements in docket serial no. E 2023 issued september 28, 1948, the board instituted an investigation to determine whether the transfer of any of the routes of national airlines inc would be in the public interest.

after negotiations extending from january to may 1949, panagra and national and pan american and national signed on may 11, 1949, separate "interchange" agreements, under the panagra agreement, panagra planes on flights originat-

ing or terminating at points south of the canal zone are to be operated by national on national's miami new york route. under the pan american agreement, national is to operate with pan american aircraft three round trips daily between miami and new york at least one of which must be a through flight originating and terminating at certain points on pan american's route. the other trips will be round trips between miami and new york with pan american aircraft not engaged in through flights. simultaneously with the interchange agreements, collateral agreements were executed between pan american and national and w. r. grace & co. & national whereby pan american acquired an option to purchase up to 30 percent of national's stock and grace acquired the option to maintain at 18 percent its holdings of national's stock. in the course of the negotiations leading to the agreement, grace has acquired 174,000 shares or 18 percent of national's stock at a cost of approximately $1,000,000.)

[fol. 5240] the pan american, panagra and grace agreements are all interdependent by their terms so that should the board fail to approve the pan american national agreement the panagra national agreement would not become effective unless the condition of interdependence should be removed.

all the agreements (other than the grace national agreement) were filed for approval on may 12, 1949 under docket nos. 3785 and 3786 and these applications were later consolidated into docket 3500 (national route investigation).

public hearing on these applications started on march 14, 1950 and was adjourned june 14, 1950 with a record of 4833 pages.

each of the interchange agreements provides that national will pay to pan american and panagra respectively an amount which shall compensate them on a fair and reasonable basis for the use of their aircraft under the agreements. the payments are to include reimbursement for all costs incident to the charter plus a fair return on investment. the agreements also provide that should the parties not reached agreement upon the amount of the

rental they will submit any unresolved questions to the CAB "for binding determination in such manner as the board shall direct".

prior to the commencement of the public hearing panagra and pan american had agreed with national on the cost element of the aircraft rental, but had not agreed on the return on investment and the parties were formally advised that the board would not undertake "to complete the agreement by fixing such rate of return".

[fol. 5241] since the adjournment of the hearings, panagra and national have executed and filed with the board an agreement on the return on panagra's investment and there are no further points now at issue between national and panagra under the panagra interchange agreement, pan american and national however have failed to agree on the rate of return and in order serial no. E-4707 dated october 6, the board granted motions of braniff, C & S and eastern to dismiss the applications for approval of the national/pan american and panagra and related agreements unless the supplemental agreements covering the matters still at issue should be filed within a specified period which now expires on october 23, 1950.

as stated above, the only point still open, agreement on which is necessary to complete the applications and to enable the board to pass on the merits of the proposed interchanges and stock acquisitions, is the relatively trivial matter of the return payable by national to pan american, on pan american aircraft operated by national under the pan american-national interchange agreement. it appears most unlikely that the parties will reach agreement on this point before october 23 and unless the board undertakes to fix such rate of return or specifies a method whereby such rate of return shall be fixed, (which would bind the parties under the agreement), the board's order of dismissal applicable not only to the pan american interchange but also to the panagra interchange (as the agreements by their terms are interdependent on each other) will become effective.

[fol. 5242] the primary and absolutely controlling interest of panagra and grace in this proceeding is to enable panagra to offer through one plane service between new york and washington and lima, peru, santiago, chile and buenos aires, the principal capitals now served by panagra. the united states terminus of panagra's flights is now miami. it is unnecessary to enlarge here on the considerations of public interest which demand through one plane service between new york and the west coast of south america and buenos aires. the importance to the public interest of providing such service between those points has been emphasized by the president and by the C.A.B. in previous proceedings.

aside from this, another highly important consideration of public interest is the desirability of a constructive outcome of docket 3500 (national route investigation). in his article "the air-route pattern problem" (vol 17 - the journal of air law and commerce - no. 2 - page 129) mr. russell. adams, a member of the civil aeronautics board, summarized pan american panagra grace national agreements and referring to them said "especially to be noted in the procedural progress of this case is the fact that specific actionable proposals have been submitted to the board to be examined concurrently with the board's detailed study of the entire national problem . . . to the extent that the board's determination may be reasonably met by the proposals submitted by national grace & co., panagra, pan american, and eastern, the proposals may be approved." it is obviously most desirable in the public interest that the board pass upon the merits of these proposals and not permit them all to be dismissed because of failure of two of the parties to agree on a relatively trivial matter.

[fol. 5243] assuming failure by pan american and national to agree on the rate of return and assuming refusal by the board to fix the rate of return the board has other alternatives under the agreements including that of directing the parties to arbitrate.

WASHINGTON SAID:— ok two copies will be delivered to mr verner today

MR GRACE
MR CLARK

shares for an amount in excess of the amount at which they are carried on the books of National on the date of valuation you agree to pay to National an additional amount equal to the value added to said shares by reason of the sale of said real estate and buildings.

(c) National now owns twelve Lodestars which are carried on its books at zero. National is considering the sale of said Lodestars for a substantial amount. National also owns seven DC4s and is considering the sale thereof at a price substantially in excess of the amount at which said DC4s are carried on its books. If said Lodestars and/or DC4s are sold after the date of valuation of said shares you agree to pay to National an additional amount equal to the value added to said shares resulting from the sale of either or both the Lodestars and DC4s.

(d) National has been depreciating its DC6s and "component parts" as defined in Civil Aeronautics Board accounting procedure over a five year period. It is understood that in the determination of book value depreciation on said DC6s and "component parts" shall be adjusted to a seven year basis.

It is understood that if at the time you are to purchase the above 346,000 shares or 172,000 shares, Pan American shall not have entered into the "equipment interchange" agreement with us referred to in paragraph 2 or said agreement shall not have been approved by the Civil Aeronautics Board or PAA shall not have purchased the stock of our company referred to in Paragraph 5 below, you shall have the right at your option to reduce your total purchase of our stock referred to in this Paragraph 4 to the 174,000 shares mentioned above, purchased by you not later than March 30, 1949.

[fol. 5237] 5. In the event that PAA shall enter into an "equipment interchange" agreement with us as provided above and said agreement is approved by the Civil Aeronautics Board, PAA shall have the right until ten days

after such approval to purchase from us and we will sell to them, at book value as defined in Paragraph 4 above, up to the same number of shares of our stock as you may purchase. We may also sell to PAA such additional shares of our company at such price and terms as we may mutually agree with them.

6. It is agreed that should you sell to Panagra all or any part of the number of shares retained by you after the exercise of the rights provided for in Paragraphs 4 or 5 such sale shall be on the condition that the voting rights of the shares sold to Panagra may be exercised by the President of Panagra in his absolute discretion.

7. Upon consummation of the sales of shares pursuant to Paragraphs 4 or 5 we agree that, subject to the approval of our stockholders, in the form prescribed by the laws of Florida, our Certificate of Incorporation and By-Laws shall contain whatever provisions may be necessary to fix the total number of Directors at 11 and to insure at all times cumulative voting rights in respect to the shares purchased under paragraphs 4 and 5.

8. Should we agree with Panagra upon the terms of an "equipment interchange" agreement as provided in Paragraph 1 and the Civil Aeronautics Board should disapprove such proposed agreement this offer shall expire, or in the event we agree with Panagra on the terms of an "equipment interchange" agreement and prior to the approval or disapproval of said "equipment interchange" agreement by the Civil Aeronautics Board we determine that it is necessary for us to do equity financing, we shall have the right to terminate on fifteen days' written notice your right to purchase shares of our stock not already purchased and not subsequently purchased during such fifteen day period specified in said notice. In the event of our exercising the right of termination herein provided, you shall have the right, at your option, to terminate the "equipment interchange" agreement theretofore entered into between us and, at your option, to tender to us any of our stock which you have theretofore purchased hereunder and we agree to repurchase from you any stock so tendered to us for cash at the price you paid us therefor.

case. Grace, therefore, decided to sell its entire holding in National and on July 19th, the day before the Board issued the order denying temporary approval, Grace completed the sale of its stock. The purchaser was National Airlines. The issue of whether Grace controls National is therefore a dead issue and can no longer be used by any of our opponents in the New York Balboa Through Service Proceeding as a pretext for arguing that Panagra should not come into New York under a National interchange.

Braniff Route Extension Proceeding

Braniff, as you know, has had pending for sometime an application before the C.A.B. for an extension of its route from Havana to Washington and New York, and from Lima to Santiago.

During the course of the Panagra National interchange proceeding Braniff had filed a motion for immediate hearing on that application and had also applied for an "exemption" which would permit Braniff to inaugurate immediately service beyond Havana to Washington and New York.

In order 5540, also enclosed, the Board denied both these motions.

[fol. 5252]

Braniff Extra Into Miami as Intermediate Point on Its Houston-Havana-South America Route.

In its order E-5542 issued on July 20th, also attached, the Board took further action seriously prejudicial to Panagra. The order provides that effective immediately and until issuance of a final order in the New York Balboa Through Flight Proceeding or until further order of the Board Braniff shall have the right to go into Miami as an interim stop on its Houston Havana South America route. The order restricts Braniff's use of Miami to the extent that they may not carry local passengers between Houston and Miami or between Miami and Havana but that, of course, does us no good. This action by the Board seems to me to be wholly unwarranted and both Panagra and Pan American are attacking the order vigorously. It is my personal opinion that the order is evidence of the Board's irritation

at its inability, for the reasons stated above, to effect an intermediate through service with Panagra between Washington and New York. This is borne out by the following extracts from the opinion:—

> "We recognize that the remedy we are here employing is unusual, but the circumstances warrant the employment. The Board has earnestly endeavored to establish improved service to Latin America by means of the temporary interchange in which National, Panagra and Pan American would participate. That effort has failed completely. While we recognize that the extension of Braniff to Miami will not be a complete solution of the problem, it will contribute to the development of improved service to Latin America, and afford an opportunity for even greater improvement through interchange between Braniff and other National Eastern."

The order seems open to attack on several grounds. In the first place Braniff never applied for it. In the second place no notice was given to anybody that the Board was contemplating such an order. In the third place [fol. 5258] Braniff into Miami contributes no traffic whatsoever to the improvement of the service between New York and Washington and South America, and will accrue merely in diversion from the Pan American-Panagra aircraft of whatever traffic Braniff might be able to [illegible]. I feel safe in saying that it will not generate new traffic even by one single passenger who would not have traveled otherwise via the Panagra route.

The foregoing about sums up the effect of the C.A.B. orders which came out last Friday.

What I want to drive home as emphatically as I can is that while the effect of the orders is highly unsatisfactory, and I make no effort to conceal that fact, there is no reason whatsoever to be discouraged or to be downhearted. It is recognized by the Board and by every party to the proceeding that as a matter of public interest, and in the interest of Panagra, through service between New York and West

[fol. 5244]

W. R. GRACE AND COMPANY EXHIBIT 104

June 4, 1952

MEMORANDUM TO MR. A.B. SHEA

In connection with any letter you may be planning to write about renewal of Panagra's Brazilian permit, you may wish to have before you the following summary of events relating to Panagra's Brazilian operations:

1. In 1941 at the request of the State Department, acting on behalf of the War Department and with the cooperation of the Defense Supplies Corporation and the Bolivian Government, Panagra commenced service westeast across Bolivia into Brazil replacing the services provided by the German Lufthansa. Panagra also undertook to manage LAB and built ground facilities in eastern Bolivia as far as the Brazilian border.

2. From 1941 to January 31, 1951, Panagra operated continuously across Bolivia, first into Corumba and subsequently into Campo Grande, Brazil where connections were made with PAB flights to Rio and Sao Paulo. At the time the permit was cancelled, two DC-3 flights were being operated per week.

3. Prior to 1946 Panagra's Brazilian flights were approved by Brazil for an indefinite period based on the filing of a schedule. In 1946 a Bilateral Air Transport Agreement was entered into by the U.S. and Brazil and until 1950 Panagra served Campo Grande as a U.S. carrier designated by the U.S. under this agreement.

4. In 1950 Brazil notified the U.S. that it did not consider Panagra's service as covered by the bilateral agreement and denied Panagra's right to continue its operations in Brazil. Panagra learned in 1950 that the 1946 formal note delivered by the U.S. Embassy to Brazil designating Panagra to serve Campo Grande under the [fol. 5245] agreement, had been poorly drawn and was subject to misinterpretation if the Brazilians were looking for

9 months period commenced November 8, 1951 and expires August 6, 1952.

11. Panagra to commence its service to Brazil, terminating at Corumba rather than at Campo Grande, on November 24, 1951 after ascertaining that the Brazilian authorities at Corumba had been notified of the Brazilian authorization. A schedule was filed with the Brazilian Government but no further formalities were necessary. No formal permit was received from Brazil and the only supporting item in Panagra's files is the letter from the Bolivian DAC transcribing the message from the Bolivian Minister of Foreign Affairs to the effect that Brazil had authorized our service for 9 months.

12. Panagra has a long term contract with the Bolivian Government dated May 6, 1943 under which Panagra undertook to operate a twice-weekly service between Bolivia and Brazil.

13. The reasons for Brazil's desire to terminate Panagra's Brazilian operations have never been clear to Panagra nor to the U.S. representatives involved, and it is believed that Brazil's attitude has been arbitrary and without cause. All U.S. west east routes to Brazil are to be eliminated under the U.S. Brazilian Bilateral Air Transport Agreement when the north south Manaos Corumba 5247 route is activated. With this limit the possibility of Panagra's operating forever into Brazil from Bolivia is not an issue.

The service provided by Panagra between Brazil and Bolivia has always been of benefit to the public. Transportation is a vital factor in the promotion of cultural and commercial relations between countries and it makes sense for Brazil and Bolivia to promote such relationships by continuing the service provided by Panagra.

H. L. C.

porary approval of the Panagra National agreement given by the Board in its tentative order of April 12th. This, of course, means that the question of how Panagra planes will operate a through one-plane service between New York and points on the Panagra route is left for decision in the "New York Balboa Through Service Proceeding".

This action by the Board is, of course, most disappointing. Both our counsel and myself had, of course, been thoroughly aware of the fact that some very thorny legal problems existed in the temporary approval proceeding. The principal legal hurdles to be overcome were:

1. The so-called interdependent clauses of the various Pan American and Panagra and National agreements, and

2. The question of whether or not Pan American's consent would be required under the Through Flight Agreement to enable the Panagra National interchange to become effective by delivery to National of our aircraft at Miami and return of the aircraft by National to Pan American at Miami.

Strong arguments on both sides of these questions were presented to the Board in briefs and in the final oral argument. The Board has not decided those questions but has stated:

"If we should make final our tentative opinion and order approving the two agreements now before us, it would be necessary to dispose of all of these serious problems. If we were here considering the question of permanent approval of the agreements and the provision of a permanent through service, such an undertaking would, of course, be a part of our normal responsibilities. However, in our opinion the advantages that would flow from an interim service are not sufficient to warrant undertaking the solution of the foregoing problems, particularly in view of the apparent fact that our efforts would end in a futility". (Page 10).

[illegible] The Board then goes on to say that since all they could do by their order would be to give their permis-

sion for the operation of the Panagra National interchange and could not compel the cooperation of Pan American in the activation of the interchange agreement so that its passage order would be ineffectual.

I refer you also to pages 8 and 9 of the opinion in which the Board clearly upholds our contention that the immediate initiation of a through service was in the public interest, and judged solely from the viewpoint of public interest should be made effective now without awaiting the "substantial period of time" involved in a more comprehensive long-range solution of the through service problem.

There is one other matter involved in the case with respect to which I should like to go into some detail.

As you know, Pan American, Eastern and Braniff had taken the position that the acquisition of W. R. Grace & Co. of 174,000 shares (6.7%) of National stock constituted control of National by Grace and therefore required approval by the Board. Grace had contended that its holding did not constitute control of National, pointing out that Mr. and Mrs. Baker together owned more stock than Grace; that Grace had no representation on the National Board; that it had taken no part in National management decisions; and that therefore its acquisition of the stock did not require Board approval.

A few days after the oral argument in the temporary interchange proceeding the Board issued an order in the stock control case reopening that case for the taking of further evidence on the control issue although the Board in that order stated that all parties had already had [fol. 5251] opportunity to be heard on the issue when it was raised in the National Panagra Pan American interchange proceeding.

When the order in the stock control proceeding was issued Grace, of course, had no idea as to what action the Board was going to take in the temporary interchange proceeding. Grace did feel that with the reopening of the stock control case decision on the temporary interchange might be delayed pending the outcome of the stock control

...ion and points on Panagra's route is absolutely n...
The only question remaining to be decided is how ...
accomplished. The Board has ordered that hearin...
New York Balboa Through Service Proceeding ...
later than October 1st. Panagra took the positio...
first pre-hearing conference in that proceeding w...
held yesterday, the 24th, that Panagra's only inter...
establishment of such through service and that we...
pared to do so by any means which the Board ma...
or approve, whether that be a Panagra Nation...
change, Pan American National interchange, or...
American Eastern interchange. The much distort...
of Grace control of National and the revived ...
"steamship issue" have been eliminated. We shall ...
by every fair means to press for Board action at the...
possible moment. In the meantime it is of the...
[fol. 2254] importance that there be no letdown w...
but on the contrary that there be an improvement ...
possible way in the very fine and unexcelled serv...
Panagra is providing today and an intensification ...
very fine work done by our sales organization in th...
offices. I know that those objectives will be attaine...

Very truly yours,

sgd ANDREW E. SM...

Encs. (3)

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SHEA

[fol. 5255]

W. R. GRACE AND COMPANY

(Letterhead of Pan American Wor
Miami, Florida

February 29, 195

Stamp

MR. E. BALLUDER

Dear Erwin:

This confirms my previous impressi
Grace have been doing a diamond dr
agra on the West Coast.

Regards.

WLM:PA

Encl.—(1)

[fol. 5256]

Stamp—Received Feb 25 1952—Pa
Enc.—Vice-President—Illegible

MEMORANDU

SEND ORIGINAL BY FROM

Vice-President

DEPT. Latin-American DEPT
OR DIV. Division

LOCATION Miami Florida LOCATI

DATE: February 18, 1952

SUBJECT: Report # 3 (February 1 t

REFERENCE:

CONFIDENTIA

PRESS RELATIONS

MICRO CARD
TRADE MARK ®

21

12232

MATTHEW BENDER & COMPANY
MB
36-63

microcard

Athearn, Braniff's Manager in Peru and Bolivia, when he first heard of my new assignment and said: "My God, all these Panagra people, all these Grace people and now Pan American too".

Another factor contributing to the relatively low percentage of travel agency sales is that seven of the top ten Lima agents are very active in the sightseeing or ground tour business to points in and around Lima and they derive a steady and proportionately large share of their income from these operations. The W. R. Grace Company is also in this field of activity as representative of the American Express Company, but they do not solicit tour business from other U. S. agencies. However, when Panagra is asked to arrange land excursions for individuals or groups (such as the MacKay group) they work the W. R. Grace Company into the deal. There are quite a few land tours to offer in this area and having this market pretty much themselves it is not so imperative that the larger agencies develop their airline sales.

My first impression regarding the general agency-travel agency relationship in Lima is that the travel agents cooperate somewhat more through pressure and domination than through good will. This, however, is not all bad, in my estimation as I saw how quickly the travel agency situation [fol. 5258] can get out of hand as it did in Buenos Aires and I think that Grace should make a real effort to keep their travel agency sales below 40%.

In summary of the Lima sales situation I would repeat that between W. R. Grace and Panagra the Lima market is very well covered, although from Pan American's point of view a good percentage of the local contact work, particularly on the social side is being done by Panagra executives, fifty percent of which expense is, I believe, borne by Pan American. In other words, Pan American is paying more than 10% to get their general agency job done here in Lima but in face of intense Braniff competition, which is nonexistent in Santiago and considerably less intense in

Buenos Aires, I would say it is well worth the price if the cost does not get out of hand.

GENERAL AGENCY AGREEMENTS

I believe it would be of help to me if I could receive copies of whatever agreements there are between Pan American and Panagra relating to the general agency status of the Grace offices. Also, I would like copies of any agreements between Panagra and W. R. Grace which pertain to representation activities for the PAA System on the West Coast.

DIRECT SALES

Although I fully understand that it is not my particular function to become involved with individual sales to the travelling public through my various contacts I am able to initiate some nice local sales. My procedure on these is to discuss itineraries and help the passenger plan his trip and turn him over to the local agency for handling. During the past two weeks I handled the following:

MRS. MILLER AND MRS. REEF OF MUNCIE, INDIANA

These ladies were friends of a friend from my days in Chicago and had tickets Miami-Lima-Miami. I was successful in having them change their trip into an RSA with *new revenue* of $800.00 for PAA.

MR. AND MRS. ERNESTO LARRANAGA

On a tip given me by my friend Mr. Alvarez Calderón we sold these two passengers Lima-Los Angeles-Lima via PAA's new Constellation service.

DR. AND MRS. WALTER BRIEGEL

Had a note to me from an Amexco agent in Detroit. They had come to Lima on OW ticket and I sold them Lima-Santiago-Buenos Aires-La Paz-Lima.

Press group on March 5th. Attached is a story on the new office as it appeared in the "Peruvian Times", an English language weekly with a circulation of over 5,000. A similar story will appear this week in the Spanish-language newspapers and magazines and the release to them is being distributed by the local W. R. Grace press relations man.

LIMA MARKET COVERAGE

During the period of Report #3 I have visited all the Lima travel agents at least once in the company of the Grace Agency Supervisor, Mr. Pedro Tosso, a very capable and hard-working employee. The Grace Agency has done an excellent job here in distribution of propaganda material to agents, particularly as regards ATLAS posters and the large, blue system wall map. All agents also displayed the LAD Comfort Folder-Folder advertising the new Panama Los Angeles Constellation service. Statistics showing Lima travel agents production figures for PAA System in 1951 is attached.

My first impression of Lima Agents is that they are nowhere near as aggressive as Buenos Aires agents and this is partially evidenced by the fact that normally only 30% of our system sales in Lima are handled by travel agents as against almost double this percentage in Buenos Aires. There are several factors contributing to this situation and certainly the most important is that the combined sales and contact efforts of the W. R. Grace and Panagra organizations are far too powerful for any agent or group of agents to buck. The Lima market for air travel is extremely concentrated and the executives and junior officials of W. R. Grace and Panagra *really* cover this market through business and social contacts. In addition to their coverage it is important to note that the Grace Company is the most powerful commercial organization of its kind in Peru and each of its persistent and loyal employees not only feels zealously the interests of his particular department *and every other department of the Company.* In other words the sugar, textile, banking and general management executives are almost as concerned with the Panagra-

Braniff competitive picture as the airline people themselves [illegible] Examples [illegible] officials directly concerned with airline activities in Latin

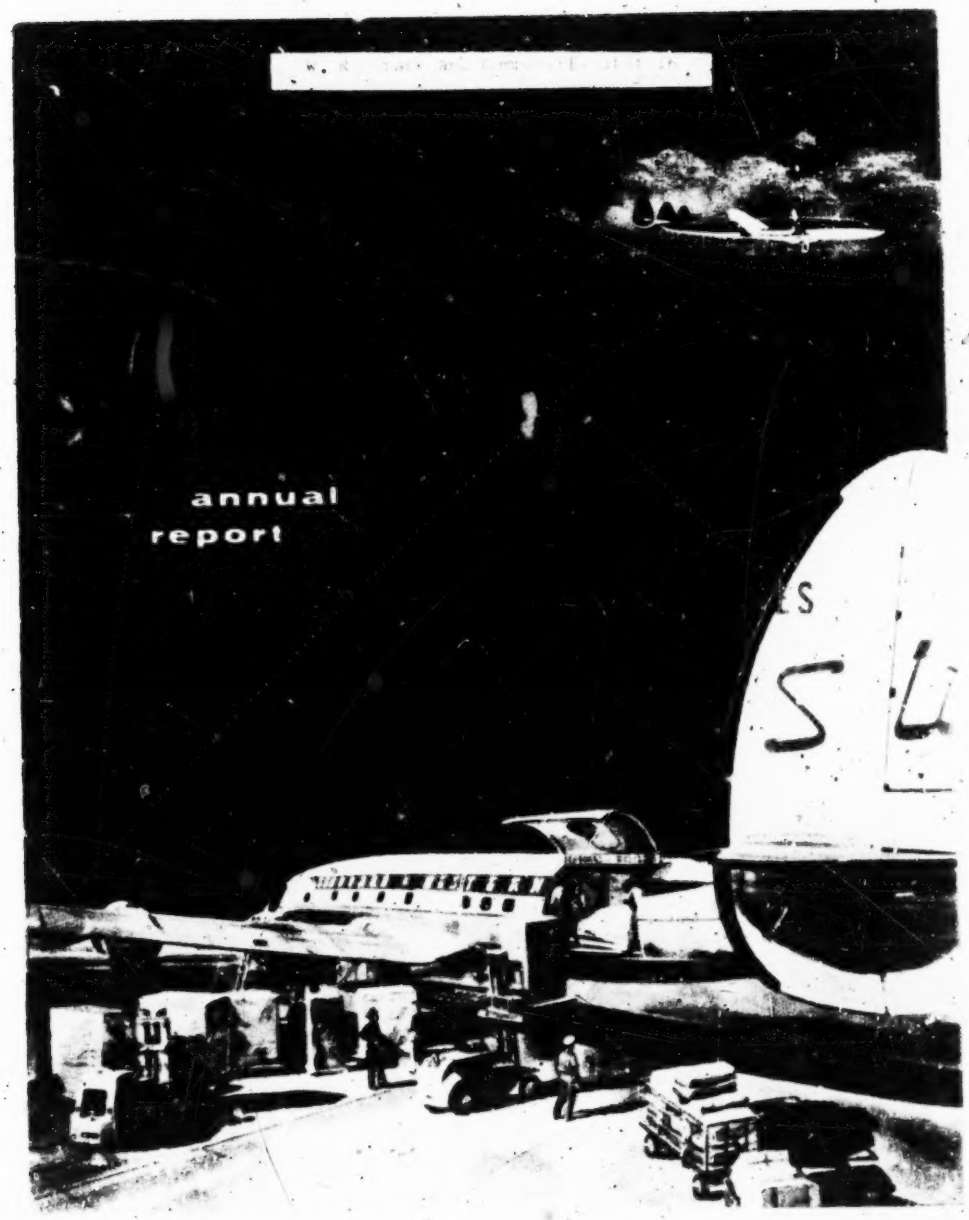
James Walker	Panagra Regional Manager
James Scholtz	Panagra Asst Regional Mgr
James Butler	Panagra Supt of Stations
George Mason	Panagra Traffic Manager
Gordon McCrum	Panagra Sales Manager
Ben Holt	Panagra Press Relations Mgr
Roberto Ribeiro	Panagra Representative Sup't
Harold Ely	Panagra Passenger Service Mgr
Jack Bradshaw	Panagra Safety Supervisor
Ernie Parsons	Panagra Public Relations
Manuel Roza	Panagra Special Assistant to Reg Mgr
Carlos Velarde	Grace Panagra Manager
Elwood Alexander	Grace Panagra Sales Manager
Roger Rowe	Grace Panagra Asst Sales Mgr
Kent Fry	Grace Hotel Reservations Mgr

All of the personnel listed above are [illegible] executives of Panagra or W R Grace [illegible] Each of them has a large circle of friends and friends and [illegible] encouragement by Panagra and Grace [illegible] at company expense. To the above list of individuals the following groups of people [illegible] Panagra and fighting Braniff, should be added:

1. The Panagra Pilot group
2. The hundreds of additional Panagra employees.
3. The hundreds of additional Grace executive and employees.

Against such an array of talent it is difficult to see [illegible] travel agents do even as much as [illegible] and it is equally difficult to imagine Braniff getting more than just a few passengers to Dallas or Havana. I will never forget the pathetic expression on the face of [illegible]

[fol. 5259a]
W. R. GRACE AND COMPANY, EXHIBIT 107



[fol. 5263]





ernment Competition

One of the most serious problems we have faced in the development of our freight business has been competition from the Military Air Transport Service he United States Air Force.

Previous annual reports have reported the development of a Civil Air Policy nting to the expanded use of air transportation by all Federal agencies because he economies inherent in this form of transportation. In this regard, the Con-ss, the Hoover Commission and the Air Coordinating Committee have recom-nded that services of commercial airlines should be utilized to the fullest extent sible; in preference to government-owned transportation, for carriage of gov-nment traffic.

Behind these recommendations is the viewpoint, based on experience during Berlin Airlift in 1948 and with the Pacific Airlift during the Korean War, t a strong and economically sound air transport system is the most productive least costly (to the taxpayers) means of developing the reserve air transport t needed for the National Defense in time of emergency.

Despite directives and recommendations to the contrary, the Military Air nsport Service has been developed and continually expanded as a commercial-e airline, diverting to its own transport fleet, in increasing volume, traffic which erwise would move on the normal services of the United States commercial nes.

MATS, as it is known, has become the world's largest single airline. It rates some 450 four-engine transports over 115,000 global route miles to 37 ferent countries. It operates on the same or parallel routes served by United tes commercial airlines, duplicating schedules, services and facilities at great t to the taxpayer.





Units of a 15-ton electronic computer are unloaded in Germany after the flight from New York

MATS cargo and mail traffic on overseas routes, alone, has grown from 43,000 tons in 1951, the first full year of the Korean War, to 150,000 tons in peacetime 1957.

The Atlantic Division of MATS lifted over 60,000 tons of cargo and mail during 1957—more than three-and-one-half times the combined tonnage (16,500) carried by the three United States-flag commercial airlines certificated to operate on the transatlantic route.

The air transport industry believes there should be a strong MATS, equipped and trained to perform a specialized strategic air transport function as required by the combat elements of the Department of Defense. Air route support, such as the commercial airlines performed during the Berlin Airlift and the Korean War, should be a commercial airline function in peacetime as well as in time of national emergency.

The industry has presented its position to the present Congress most vigorously. This, briefly stated, is that the basic mission of MATS is to prepare for wartime emergency, and not to operate a peacetime airline for carriage of government traffic in competition with the commercial airlines. This position was supported by organized labor, including the AFL-CIO, Air Line Pilots Association and the Transport Workers Union, as well as the Civil Aeronautics Board and the Department of Commerce.

In addition the Civil Aeronautics Board, in its annual report for 1957, has stated that it proposes to recommend legislation to the Congress which will confirm the Department of Defense's policy not to engage in competition with commercial airlines.

Your company has participated in Congressional Committee hearings devoted to the MATS situation. It is hoped that an informed Congress will take positive and expeditious legislative action to call a halt to this government competition

[fol. 5267]

with private industry. Congress has already dealt effectively with this problem in the maritime industry wherein the Military Sea Transport Service, the ocean surface counterpart of MATS, is limited by law in the volume of government traffic which can be moved in government-operated vessels.

Similar action to insure that government traffic, presently diverted at its source by the military, will flow freely to commercial air carriers will contribute substantially to the healthy economic growth of the air transport industry as a whole, and to the further development of transatlantic air freight in particular.

Current and Future

Entering 1958, your company continued to incur substantial operating losses. Wherever possible, your management has effected cost reductions to minimize the losses experienced during this period.

It is anticipated that this situation will change for the better in the second quarter when operations are expected to become profitable.

In April a long-term wet-lease agreement with Irish Air Lines - Aerlinte Eireann will take effect. This agreement calls for Seaboard to provide Super Constellation aircraft, flight crews and maintenance for the new Irish flagline operation between New York and Ireland. Cabin attendants will be Irish Air Line hostesses.

The inaugural westbound flight will leave Ireland on April 28 and the first eastbound flight will take off from New York on April 30. Initially, there will be three flights weekly in each direction. This will be increased to a daily schedule on June 1 and continuing through the peak tourist traffic season. During off season periods, flights will be scheduled thrice weekly. Future plans call for expansion of service between Boston and Ireland.

While Aerlinte Eireann is new in the transatlantic field, the Company's management has been eminently successful in European air transportation for 22 years with the operation of Aer Lingus, a sister company which has provided services between Dublin, the United Kingdom and the European continent since 1936. Aer Lingus operates a modern fleet of Viscount prop jet aircraft from Dublin to London, Manchester, Glasgow, Amsterdam, Brussels, Paris, Barcelona, Dusseldorf, Frankfurt, Zurich and Rome, among other points. Connecting services in Ireland between Aerlinte Eireann and Aer Lingus will provide onward service to Great Britain and the Continent for American tourists.

Irish transatlantic operations will be devoted entirely to the new Government-approved economy fare service which is 20 per cent below tourist fares. Transatlantic passenger air carriers anticipate a considerable increase in American tourist traffic to Europe during 1958 as a result of the economy fares.

Apart from the wet-lease contract, Seaboard expects to complete an agreement with Aerlinte Eireann wherein your company will purchase a 25 per cent capital share interest in the Irish company at a cost of $1,400,000. This agreement, which will be subject to approval by the Civil Aeronautics Board, requires your company to take up its allotted shares as capital is required, in any case not later than November 30, 1958.



At Shannon, Ireland, general cargo for the United States is moved to the airplane on a special cargo train.

This agreement also provides, subject to Civil Aeronautics Board approval, for your company to have minority representation on the Irish airline's board of directors.

Civil Aeronautics Board approval of this agreement and the implementation thereof will see your company enter a new and different field of air transportation.

Through Seaboard's participation in the ownership of the Irish Flag Airline and through its minority representation on the board of directors, your company can contribute further to its own development and diversification within the air transport industry. Management of your company believes this new activity will contribute on a continuing basis to the profitable growth of Seaboard.

Seaboard will implement in May another wet-lease agreement with Sabena Belgian World Airlines in connection with that carrier's New York Brussels economy fare service. This contract, which continues through October, will generate about $3,000,000 in revenues during the period specified.

While Seaboard's freight ton-mileage during early 1958 was at a lower level than that of the previous year, growth trends were evidenced in certain phases of cargo traffic which point favorably to the future. Whereas, the ton-mile curve followed a monthly declining line in the first quarter 1957, monthly ton-mileage has followed a rising curve during the same period of 1958.

In this connection Seaboard has taken several steps to reinforce its sales organization and to increase its traffic. Your company has been granted traffic rights at Basel, Switzerland, traditional international shipping center, and expects to begin service to this new point by the end of May. In addition, authority has been received for Seaboard to serve the United States military air base at Chateauroux, France, on Seaboard's scheduled cargo services.

Two new B.M.W. Isettas from Germany are positioned inside a Super Constellation Airtrader.. A 3-ton aircraft engine is tied down behind the cars.



The company has also appointed Scandinavian Airlines System as its general cargo sales agents in Norway, Sweden and Denmark. Seaboard does not presently serve these countries. However, through Seaboard's interline agreement with SAS and through common traffic points at Prestwick, London, Hamburg and Frankfurt, your company hopes to generate additional traffic from Scandinavia to the United States.

Seaboard and Railway Express Agency have terminated by mutual consent the agreement under which REA has acted as Seaboard's general sales agent in the United States. REA has made a significant contribution to the development of transatlantic air freight, particularly in the inland industrial areas of this country. However, increased coverage of this country by cargo agents, freight forwarders and Seaboard's own sales organization has obviated the requirement for a general sales agent to represent your company on a national scale.

A new source of revenue traffic was opened for your company in December when the Civil Aeronautics Board clarified Seaboard's rights, under the company's certificate of public convenience and necessity, to carry foreign mail from European countries on the company's routes to New York. Early in January, Seaboard began to carry this traffic, rates for which are determined by the Universal Postal Union, and which, during 1958, will make a significant contribution to increased revenue.

Apropos of the mail situation your company has applied to the Civil Aeronautics Board for the authority to carry U. S. Mail to the foreign countries Seaboard is authorized to serve. Approval of this application would result in a substantial increase in revenues to the company.

Based on business already in hand and the general outlook for the remainder of 1958, your company expects to overcome losses incurred early in the year and to complete 1958 on a profitable basis. Implementation of favorable legislation with respect to government traffic or successful development of any of the other traffic situations discussed earlier in this report would contribute further to the company's revenues and earnings.

As a result, the directors of your company look forward to the rest of 1958 with confidence as well as determination. Your management extends its appreciation to the company's employees and friends for their continued cooperation and loyalty during 1957.

Reginald A Norden

President.

Approved by the Board of Directors

SEABOARD & WESTERN AIRLINES, INC

Consolidated Balance

ASSETS

	1957	1956
CURRENT ASSETS		
Cash	$ 1,463,503	$ 917,045
Accounts receivable		
U. S. Government	931,247	1,302,291
Other trade	71,404	1,152,828
Other	494,247	306,063
	2,096,898	2,761,182
Federal tax refunds receivable	1,008,432	337,964
Maintenance parts and prepaid expenses	732,368	536,930
Total current assets	5,301,201	4,553,121
DEPOSITS AND NON-CURRENT NOTES RECEIVABLE		
Deposits on purchase of flight equipment	—	1,894,300
Security deposits on leases of flight equipment	1,035,000	1,070,000
Purchase option payments on leased flight equipment	450,000	399,500
Non-current notes receivable due in 1959 and 1960	350,000	300,000
Other deposits and sundry investments	93,496	163,453
	1,728,496	3,367,253
FIXED ASSETS, AT COST		
Flight equipment	9,510,071	913,949
Spare parts and assemblies	2,394,094	1,984,938
Ground and other equipment	792,071	557,901
	12,696,236	3,456,788
Less accumulated depreciation and obsolescence	1,606,635	750,788
	11,089,601	2,706,000
Unamortized improvements to leased flight equipment	888,519	1,198,685
	11,978,120	3,904,685
DEFERRED CHARGES		
Flight equipment rentals	1,233,400	661,400
Unamortized Super Constellation pre-operating expenses	803,730	702,140
Unamortized maintenance facility start-up expenses	272,886	328,325
Unamortized extension and development costs	96,358	133,065
	2,406,374	1,824,930
	$21,414,191	$13,649,989

Reference is made to the accompanying notes

Ten

Sheets *at December 31, 1957 and 1956*

LIABILITIES AND STOCKHOLDERS' EQUITY

	1957	1956
CURRENT LIABILITIES (see accompanying note on notes payable to banks):		
Accounts payable (trade	$ 2,455,348	$ 2,131,000
Accrued salaries and other expenses	1,851,063	997,162
Liability to former stockholders of subsidiary acquired December 31, 1957 (less amount shown below)	1,084,180	
Notes payable to banks (installments due within one year)	1,922,193	149,250
Total current liabilities	7,432,724	3,205,000
NOTES PAYABLE TO BANKS (less installments due within one year)	4,153,667	991,250
PORTION OF PURCHASE PRICE OF SUBSIDIARY REQUIRED TO BE SETTLED BY ISSUANCE OF STOCK NOT PRESENTLY OUTSTANDING	400,000	
RESERVE FOR AIRCRAFT AND ENGINE OVERHAUL	105,373	440,000
RESERVE FOR FUTURE FEDERAL INCOME TAX	1,566,000	977,000
STOCKHOLDERS' EQUITY		
	Number of Shares: 1957	1956
Common stock, $1 par value		
Authorized	1,500,000	1,000,000
Issued	1,002,700	961,404
Less in treasury	4,008	4,008
Outstanding	998,692	957,396
Reserved for exercise of options	28,158	27,750
Reserved for issuance as portion of purchase price of subsidiary	50,000	
	78,158	27,750
Capital in excess of par value of common stock per accompanying statements	4,663,510	4,165,194
Earned surplus, per accompanying statements	2,102,810	1,185,406
Total stockholders' equity	7,764,510	5,348,350
LONG-TERM LEASES AND COMMITMENTS (see Notes)		
	$21,414,191	$13,649,600

Notes to Consolidated Financial Statements are an integral part of this statement.

EABOARD & WESTERN AIRLINES, INC

Statements of Income

For the Years Ended December 31, 1957 and 1956

	1957	1956
OPERATING REVENUES		
Freight	$ 7,277,019	$ 7,149,611
Special, charter and other	14,818,522	11,616,872
	22,095,541	18,766,483
OPERATING EXPENSES		
Flying operations	6,561,479	6,060,993
Flight equipment rentals	3,108,086	2,232,952
Provision for depreciation, obsolescence and amortization	1,368,444	507,457
Maintenance and repairs	6,550,850	4,741,447
Ground operations	1,292,630	1,236,099
Traffic and sales	2,972,733	2,337,752
General and administrative	925,858	1,005,157
	22,780,080	18,121,862
	(684,539)	644,621
OTHER INCOME	102,414	25,934
INTEREST EXPENSE	(254,429)	(66,396)
	(836,554)	604,159
FEDERAL INCOME TAX RECOVERY ARISING FROM LOSS CARRY-BACKS	(1,015,500)	(345,000)
	178,946	949,159
PROVISION FOR FUTURE FEDERAL INCOME TAX	580,500	653,000
NET INCOME (LOSS) FOR THE YEAR	(401,554)	296,159
SPECIAL ITEM		
Gain of $252,114 on sale of flight equipment, less federal income tax applicable thereto		189,114
NET INCOME (LOSS) AND SPECIAL ITEM	$ (401,554)	$ 485,273

1956 figures have been reclassified to conform to 1957 presentation.
Reference is made to the accompanying notes.

else

Statements of Capital in Excess of Par Value of Common Stock and of Earned Surplus

For the Years Ended December 31, 1957 and 1956

	1957	1956
CAPITAL IN EXCESS OF PAR VALUE OF COMMON STOCK		
Balance at beginning of year	$4,103,194	$1,307,624
Excess of amount charged to earned surplus over par value of shares issued as 4% stock dividend	542,863	
Amount received in excess of par value on issuance of shares on exercise of options (3,000 shares in 1957, 1,200 shares in 1956)	17,453	6,981
Amount received in excess of par value of 180,000 shares of common stock sold (less expenses of $250,208)		2,764,792
Excess of amount charged to income over par value of 1,500 treasury shares issued as special compensation to employees		23,797
Balance at end of year	$4,663,510	$4,103,194
EARNED SURPLUS		
Balance at beginning of year	$3,085,614	$2,600,341
Net income (loss) and special item	(401,554)	485,273
	2,683,060	3,085,614
Less: 4% stock dividend—38,392 shares—at market price at date of declaration	580,255	
Balance at end of year	$2,102,805	$3,085,614

Reference is made to the accompanying notes

Notes to Financial Statements

Acquisition of subsidiary

On December 31, 1957, the Company purchased all the outstanding capital stock of Seagull Airtransport Corp. for $1,000,000, of which $200,000 was paid in cash in January 1958, $200,000 by the issuance of notes, payable in twelve equal monthly installments from February 1, 1958 with interest at 5½%, and the balance of $600,000 is payable by June 15, 1958, at the option of Seaboard in any combination of cash or common stock of Seaboard in any at $8 per share. Pursuant to the requirements of a Seaboard bank credit agreement, $400,000 of this amount is required to be settled by the issuance of common stock not presently outstanding.

The principal assets of Seagull at December 31, 1957 were one Super Constellation aircraft (previously leased by Seaboard) and $1,200,000 in cash representing the proceeds of a bank loan dated December 31, 1957. In addition, Seagull had debentures outstanding which were retired at a cost of $404,100 in January 1958. As a result of the Seagull acquisition, Seaboard obtained an additional Super Constellation aircraft at a cost of $1,442,073.

Long-term leases and commitments

The Company has leased six Super Constellation and three DC-4 aircraft, and owns four Super Constellation aircraft.

Three Super Constellation aircraft and twelve spare engines are leased from Aviation Equipment Corporation for a ten-year period which began in September 1954, at a total rental ranging from $1,422,000 during the first year of the agreement to $1,260,000 during the fourth and fifth years and $460,000 per year thereafter. The holders of certificates of deposit for the common stock of Aviation Equipment Corporation have an option which, if exercised, will obligate the Company to purchase 100% of the common stock of that corporation on August 31, 1959, which would result, in effect, in Seaboard acquiring ownership of the three aircraft and spare engines leased from Aviation Equipment Corporation at a cost estimated at $2,250,000. Seaboard has advanced to Aviation Equipment Corporation a security deposit of $1,000,000 of which $640,000 is repayable to the Company in 1959 and will be applied against the purchase of the stock, together with the remaining $360,000 of the deposit, if the option is exercised. If Seaboard does not acquire the common stock of Aviation Equipment Corporation, it has an option to extend the lease for an additional five-year period beginning in 1964 at an aggregate rental of $360,000 per year, and the remaining $360,000 of the security deposit will be payable to the Company during the last year of the lease.

Two Super Constellation aircraft are leased for a seven year period expiring in January 1964 at a total annual rental of $840,000. Seaboard paid $300,000 for assignable options to purchase these aircraft, exercisable not later than February 28, 1963. The option payments may be applied against the purchase price to the extent of $150,000 per aircraft but are not otherwise refundable.

One Super Constellation aircraft and four spare engines are leased for a seven year period expiring in April 1963 at rentals ranging downward during the lease period from $570,000 to $420,000 per annum. Seaboard paid $100,000 for an assignable option to purchase this equipment, exercisable not later than December 31, 1962, which payment may be applied against the purchase price but is not otherwise refundable.

Two DC-4 aircraft are leased to April 1958 at a total annual rental of $240,000 and one additional DC-4 aircraft to March 1960 at an annual rental of $180,000. Seaboard paid $50,000 for an assignable option to purchase the latter aircraft, exercisable not later than January 31, 1959, which payment may be applied against the purchase price but is not otherwise refundable.

As lessee, Seaboard is also responsible for maintenance, overhauls, insurance and other operating costs of all the above mentioned equipment.

Deferred charges

Super Constellation flight equipment rentals under two leases which require declining payments during the lease periods are charged to expense on a straight-line basis. Accordingly, rentals amounting to $572,000 in 1957 and $661,400 in 1956 have been deferred at December 31, 1957.

Expenses of $217,100 in 1957 and $265,700 in 1956, incurred in training flight and ground personnel and other related pre-operating expenses attributable to the substantial increase in number of Super Constellation aircraft operated by the Company have been deferred and are being amortized, together with expenses of a similar nature incurred in prior years, over a period of approximately eight years.

Notes payable to banks

Notes payable to banks consist of:

	Current	Long-term
5½% notes under a $1,000,000 revolving credit agreement which expires December 31, 1958, secured by an assignment of monies due or to become due from the U. S. Government of which $817,229 is included in accounts receivable at December 31, 1957	$ [illegible]	$
5% notes, due in equal monthly installments to March 1962, secured by chattel mortgage on three Super Constellation aircraft and spare engines (included in fixed assets at $6,103,585 after deduction of accumulated depreciation and obsolescence)	1,002,168	3,171,587
5½% notes, due in sixty equal monthly installments beginning in February 1958, secured by chattel mortgage on one Super Constellation aircraft and improvements thereto (included in fixed assets at $1,563,978 after deduction of accumulated depreciation and obsolescence)	220,000	980,000
	$1,922,168	$4,151,587

The credit agreements applicable to the foregoing notes provide, among other things, for the maintenance of minimum amounts of net worth and working capital. At December 31, 1957 the Company's net worth and working capital were $348,123 and $2,874,365, respectively, less than the minimums required and these deficiencies have substantially increased in the first quarter of 1958. The banks have advised the Company that they do not presently intend to take any actions available to them by reason of such defaults (which can include accelerating the due dates of the indebtedness), but have specifically reserved their rights to take such actions as they may deem necessary in the future as the result of such existing defaults or any future ones.

The credit agreements also provide that the Company may not declare dividends, other than stock dividends, in excess of 50% of the net profits (as defined in the agreement) accumulated after December 31, 1955. At December 31, 1957, $2,060,946 of the earned surplus was restricted as to cash dividends under this clause.

Future Federal income tax

Certain expenses incurred during 1957 and prior years which were deferred in the financial statements have been deducted currently for income tax purposes and other items have temporarily reduced taxable income. As a result cumulative taxable income to date has been substantially less than that reported in the financial statements with consequent substantial reduction in Federal income taxes paid. Accordingly, the Company has provided a reserve for the Federal income tax reduction to date which is expected to be payable in the future when the situation is reversed and taxable income exceeds that reported in the financial statements.

Reserve for aircraft and engine overhaul

Effective January 1, 1957, the Company discontinued its policy of providing a reserve for engine overhaul and is now charging expense with the cost of engine overhauls as incurred. As a result of this change maintenance and repairs were reduced by $325,646 and the net loss for the year 1957 was reduced by $[illegible].

Stock options

At December 31, 1956 certain key employees held options on 27,700 shares of common stock. Options on 14,200 shares were exercisable at any time during the two year period beginning July 23, 1956 at an option price of $8.82 per share; of these options on 3,000 shares were exercised in 1957. Options on 14,500 shares were exercisable at various dates beginning in 1957 and expiring in 1959 and 1961 at option prices of $12.94 and $13.78 per share. As a result of the 4% stock dividend declared in 1957 the options were revised to a total of 29,688 shares at option prices ranging from $8.55 to $13.25 per share.

In 1957 an option was granted an additional key employee for 2,500 shares at $9.26 per share (which was 90% of the market value at date of grant), exercisable at any time during the two-year period beginning October 15, 1958.

Operating expenses

In 1957 substantial operating revenues were received under a lease which provided that Seaboard maintain the aircraft while the lessee assumed most of the other direct operating costs. As a result the increase in maintenance and repairs in 1957 has been disproportionate to the increases in other expenses.

Contingent items

Seaboard has claimed substantial amounts from a major supplier of services. In 1956 it accrued the minimum believed by it to be recoverable. It is not possible at this time to state with certainty the amount which may eventually be collected on these claims.

Report of the Auditors

ARTHUR YOUNG & COMPANY
ACCOUNTANTS AND AUDITORS

65 BROADWAY
NEW YORK 6

THE BOARD OF DIRECTORS AND STOCKHOLDERS,
SEABOARD & WESTERN AIRLINES, INC.:

We have examined the accompanying consolidated balance sheet of Seaboard & Western Airlines, Inc. and subsidiary at December 31, 1957 and the related statements of income, capital in excess of par value of common stock, and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. It was not practicable to confirm receivables from the United States Government, as to which we have satisfied ourselves by means of other auditing procedures.

In our opinion, the statements mentioned above present fairly the consolidated financial position of Seaboard & Western Airlines, Inc. and subsidiary at December 31, 1957 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied in all material respects on a basis consistent with that of the preceding year except for the change, which we approve, in accounting for engine overhauls as described in the notes to financial statements.

Arthur Young & Company

March 20, 1958

[fol. 5277]

ATHENS, GREECE
35 Winston Churchill Street

DUSSELDORF, GERMANY
Flughafen, Lohausen

FRANKFURT/MAIN, GERMANY
Am Hauptbahnhof 2 and Rhein Main Airport

GANDER, NEWFOUNDLAND
Gander Airport

GENEVA, SWITZERLAND
Cointrin Airport

GLASGOW, SCOTLAND
83 Buchanan Street

HAMBURG, GERMANY
Fuhlsbuettel Airport

LONDON, ENGLAND
21 Cork Street and London Airport

LUXEMBOURG, G.D.L.
6 Ave. Marie-Therese and Findel Airport

MUNICH, GERMANY
Flughafen Riem

NEW YORK, N.Y.
80 Broad Street and
New York International Airport

NUREMBERG, GERMANY
Nuremberg Flughafen

PARIS, FRANCE
26, Rue de la Pepiniere

SHANNON, IRELAND
Shannon Airport

STUTTGART, GERMANY
Stuttgart Echterdingen Airport

WASHINGTON, D.C.
1001 Connecticut Avenue

ZURICH, SWITZERLAND
Genferstrasse 11 and
Kloten Airport

BELGIUM
Ruys & Co., Brussels

FRANCE, THE FRENCH UNION AND MEXICO
Air France, Paris

ITALY
Air Service International, Milan

THE NETHERLANDS
Ruys & Co., Amsterdam

NORWAY, SWEDEN AND DENMARK
Scandinavian Airlines System
Oslo, Stockholm and Copenhagen

SPAIN
Maritimas Reunidas, S.A., Madrid

UNITED KINGDOM
British Overseas Airways Corp., London

[fol. 5277a]

W. R. GRACE AND COMPANY EXHIBIT 168

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Plaintiff,

against

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY and PAN AMERICAN-GRACE AIRWAYS, INC.,
Defendants.

Civil Action No. 90-259.

ANNEXES TO TRIAL MEMORANDUM SUBMITTED ON BEHALF OF W. R. GRACE & CO.

[fol. 5278]

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ANNEX 1

FROM THE MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII TUESDAY, JULY 31, 1951

Present the Honorable D. E. Metzger, District Judge presiding

Wm. F. Thompson, Jr., Clerk

Wallace G. Forsythe, Court Crier

Albert Grain, Court Reporter

Hawaiian Airlines, Ltd., *vs.* Trans-Pacific Airlines, Ltd.	Civil No. 817

On this day came Mr. J. Garner Anthony of the firm Robertson, Castle & Anthony, counsel for Hawaiian Airlines, Ltd. and Inter-Island Steam Navigation Co., Ltd., and also came Mr. Frank W. Gaines and Mr. Sai Chow Doo, counsel for Trans-Pacific Airlines, Ltd. This case was called for hearing on affidavit and certificate seeking the disqualification of the Court to try this case.

The Court stated that he did not require argument by respective counsel on the matter before the Court.

Thereupon, the Court announced that in view of the allegations made by Mr. Stanley C. Kennedy, President of Hawaiian Airlines, Ltd. in the affidavit charging the Court with bias and prejudice in that the Court had prejudged and predetermined the issues in this case, he was withdrawing from the case as he felt it a more controlling duty to so do whenever such a contention is made, even though the affidavit appeared insufficient to sustain such contention.

[fol. 5282]

Mr. Gaines's attempt to persuade the Court to reconsider its stand met with no success.

The Court, however, informed respective counsel that he would be glad to assist in having a judge from the mainland assigned to this district as soon as possible to conduct the trial of this case and that a conference be held in that connection.

ANNEX 2

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

HAWAIIAN AIRLINES, LIMITED,
Plaintiff,

v.

TRANS-PACIFIC AIRLINES, LTD.,
Defendant and
Third Party Plaintiff,

v.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
Third Party Defendant.

Civil No. 817

Pre-Trial Order.

Before the Honorable SAM M. DRIVER, United States District Judge, specially designated and assigned to sit in the above entitled proceedings.

Appearances:

Attorneys for TRANS-PACIFIC AIRLINES, LTD., (referred to hereinafter as Trans-Pacific) Defendant and Third Party Plaintiff:

H. MASON WELCH, Esq.,
Continental Building,
15th & K Streets, N. W.,
Washington, D. C.

POWELL, LEAR & GAINES,
1010 Vermont Avenue, N. W.,
Washington 5, D. C.

By: FRANK W. GAINES, JR., Esq.
SAI CHOW DOO, Esq.,
305 Royal Hawaiian Avenue.
Honolulu, Hawaii.

Filed October 15, 1951 at 12 o'clock and 02 minutes p. m.

WM. F. THOMPSON, JR.,
Clerk.

[fol. 5284]

Attorneys for HAWAIIAN AIRLINES, LIMITED, (referred to hereinafter as Hawaiian), Plaintiff, and INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, (referred to hereinafter as Inter-Island), Third Party Defendant:

J. GARNER ANTHONY, Esq.
312 Castle & Cooke Building
Honolulu, Hawaii

ROBERTSON, CASTLE & ANTHONY
312 Castle & Cooke Building
Honolulu, Hawaii

Of Counsel.

PRELIMINARY MATTERS

The pre-trial conferences were started on August 20, 1951, and continued intermittently thereafter up to the beginning of the jury trial on September 11, 1951. The issues and the legal problems involved were informally discussed. A number of motions directed to the pleadings and requests for admission were disposed of and separate orders entered thereon. Shortly after the beginning of the conferences defendant and third party plaintiff, Trans-Pacific, was granted leave to serve and file an amended pleading, which was subsequently filed, designated "Counterclaim and cross-complaint of August 23, 1951." An answer to this pleading was filed by plaintiff, Hawaiian, and by third party defendant, Inter-Island, on August 29, 1951.

Near the outset of the conferences it was agreed between counsel for the parties that no further depositions would be taken except upon good cause shown to the Court and leave obtained. Thereafter Trans-Pacific applied for and was granted leave to take the deposition of Mr. Stanley C. Kennedy. Later Trans-Pacific applied for and was granted leave to take the deposition, upon written interrogatories, of Mr. Clayton L. Burwell, it appearing that Mr. Burwell would be unable to appear in person as a witness for Trans-Pacific.

Trans-Pacific, at the conference, requested the Court to enter an order fixing times for the filing of any motion under Rule 34, F. R. C. P., or for the use of any additional steps provided for in the rules pertaining to the deposition and discovery processes, calling attention to the fact that under an order previously entered no further written interrogatories addressed to Trans Pacific could be employed by Hawaiian and Inter-Island until they should have taken such depositions as they might desire to take from officers or employees of Trans-Pacific. It appearing to the Court, after discussion with counsel for all parties, that there was no need for the order suggested by Trans-Pacific in that no wish on the part of any of the parties to employ further deposition-discovery processes appeared to exist, the order requested by Trans-Pacific was not made.

In the course of the pre-trial conference counsel for Hawaiian and Inter-Island asked the Court to reconsider the order entered by the above entitled Court on November 21, 1949, entitled "Order Settling Issues Pursuant to Rule 56(d)."

Such order was reconsidered and after a number of discussions in which opposing counsel were given opportunity to express their views, the Court ultimately came to the conclusion that while the findings of undisputed facts as set forth in such order should not be disturbed, the Court would revoke and set aside that portion of the second page of the order consisting of paragraph (a), which reads as follows:

> (a) That the organization of Hawaiian by Inter-Island in 1929, to operate as an air carrier over routes substantially parallel to its surface common carrier operation, was a violation of Sections 1 and 3 of the Sherman Act (15 USC 1 and 3).

The Court concluded and ordered that the issue of law involved in the conclusion stated in paragraph (a) quoted above should be left open for determination upon the trial of the cause and that the same should be covered in the instructions of law given to the Jury by the Court at the conclusion of the trial.

[fol. 5286]

ADMITTED FACTS

It is admitted Inter-Island was a water carrier of persons and property operating between ports of Hawaii except during World War II from the year 1883 to 1950, when it discontinued operations as a water carrier; that in 1929 it organized Hawaiian, an air carrier, to operate between points within the Territory of Hawaii and that from the date of its incorporation from January 30, 1929 until the year 1950, Inter-Island held the controlling interest in the stock of Hawaiian and that at all times during this period the two companies had substantially the same officers and directors.

ANNEX 3

IN THE UNITED STATES DISTRICT COURT FOR THE TERRITORY OF HAWAII

HAWAIIAN AIRLINES, LIMITED, Plaintiff, *vs.* TRANS-PACIFIC AIRLINES, LTD., Defendant and Third Party Plaintiff, *vs.* INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Third Party Defendant.	Civil No. 817

Court's Instructions to the Jury.

[EXTRACTS]

INSTRUCTION NO. 11

You are instructed that it was not *per se* or in and of itself an unreasonable restraint of trade or commerce for Inter-Island, a surface carrier, to organize and assume control of Hawaiian, an air carrier, operating over parallel routes. To determine whether or not that relationship, together with its effects and the acts and things done by the parties in connection with it, did actually result in unreasonable restraint of trade, you should consider all of the evidence bearing thereon in the light of the Court's instructions. In this connection you are further instructed that it is unreasonable *per se* to foreclose competitors from any substantial market.

[fol. 5288]

INSTRUCTION NO. 12

A contract, combination or conspiracy not unreasonable either *per se* or because of an illegal specific intent, may become unreasonable in the market situation in which it is effective. In other words it is not always necessary to prove specific intent. It is sufficient if unreasonable restraint in fact results as the consequence of the conduct or business arrangements of the parties charged with violation of the antitrust laws. If you find a contract, combination or conspiracy having the effect of restraining trade existed between Hawaiian and Inter-Island, but find that there was, on the part of Inter-Island and Hawaiian no specific intent to do anything illegal, you must then determine whether or not the contract, combination or conspiracy did unreasonably restrain trade. In so deciding, the dollar volume of trade affected is not of compelling significance. You must look rather to the percentage of business controlled, strength of the remaining competition, whether the action springs from business requirements, or purpose to restrain trade, the probable development of the industry, consumer demands, and other characteristics of the market.

INSTRUCTION NO. 14

The antitrust laws do not forbid the natural and normal growth and expansion of a business to meet the needs of new markets of a community nor the adoption of reasonable measures to protect it from injurious and destructive practices and to promote competition on a sound basis.

INSTRUCTION NO. 18

The law does not make mere size or the existence of unexerted power an offense. It requires overt acts and trusts to its prohibition of them and its power to repress or punish them. It does not compel competition nor require all that is possible. However, in determining whether or not in a given situation a combination or conspiracy unrea-

sonably restrains trade or commerce you may consider size in so far as it affords potential power to control markets and a potential advantage over smaller competitors.

INSTRUCTION NO. 19

The Court instructs you that the anti-trust laws do not apply in exactly the same manner to a regulated air carrier as they do in unregulated business. In this case both Trans-Pacific and Hawaiian are what is known as air carriers and are under the regulation of the Civil Aeronautics Board which was established pursuant to an act of Congress known as the Civil Aeronautics Act of 1938. One section of this act (Section 409) prohibits the existence and maintenance of certain interlocking relationships between air carriers and common carriers unless they are approved by the Board after a showing that the public interest would not be adversely affected thereby. The Court instructs you that pursuant to Section 409 of the Civil Aeronautics Act the interlocking relationships that existed between Inter-Island as a surface carrier and Hawaiian, its air carrier subsidiary, in so far as their having common directors and officers is concerned, have been approved by the Civil Aeronautics Board.

The Civil Aeronautics Act (Section 412) also requires every air carrier to file with the Civil Aeronautics Board a copy or a memorandum of contracts or agreements between air carriers and surface carriers which affect air transportation. This section requires certain agreements and other cooperative working arrangements to be filed with the Board. The Board is required to approve or disapprove any such agreements or arrangements and if they are adverse to the public interest it must disapprove them. The Court instructs you that certain agreements and working arrangements between Inter-Island and Hawaiian have been filed with the Civil Aeronautics Board and have been approved.

[fol. 5290]

10

The Civil Aeronautics Act specifically provides that any person affected by any order made by the Board under Section 409 of the act which relates to interlocking relationships or Section 412 of the act which relates to agreements between air carriers and other carriers is relieved from the operations of the anti-trust laws and of all other restraints or prohibitions imposed by law insofar as it may be necessary to enable such person to do anything authorized, approved or required by such orders.

You are therefore instructed that no inference of violation of the anti-trust laws can be drawn from the fact that Hawaiian and Inter-Island had and maintained interlocking officers and directors or because of the agreements and arrangements approved by the Civil Aeronautics Board as heretofore related.

The Court instructs you that the word "person" as used in the Civil Aeronautics Act includes corporations and individuals and specifically in this case includes Inter-Island as a corporation and the individual officers and directors of Inter-Island and Hawaiian.

ANNEX 4

IN THE UNITED STATES DISTRICT COURT FOR THE TERRITORY OF HAWAII

HAWAIIAN AIRLINES, LIMITED,
Plaintiff,

vs.

TRANS-PACIFIC AIRLINES, LTD.,
Defendant and
Third Party Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
Third Party Defendant.

Civil No. 817

Judgment.

The counterclaim and cross-complaint of Trans-Pacific Airlines, Ltd., filed in the above entitled cause having come on for hearing before the United States District Court for the Territory of Hawaii, the Honorable Samuel Driver presiding, sitting with a jury, and the jury having returned a verdict in favor of Hawaiian Airlines, Limited, and Inter-Island Steam Navigation Company, Limited.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

That Trans-Pacific Airlines, Ltd., Defendant and Third Party Plaintiff, take nothing by its counterclaim and cross-complaint and that Hawaiian Airlines, Limited, plaintiff, and Inter-Island Steam Navigation Company, Limited, Third Party Defendant, have and recover their costs taxed

[fol. 5292]

in the sum of $618.09, and that the counterclaim and cross-complaint be and it is hereby dismissed.

Dated: Honolulu, Hawaii, October 23rd, 1951.

By the Court:

WM. F. THOMPSON, JR.,
Clerk.

Approved and entry by the clerk is hereby ordered.

SAMUEL M. DRIVER,
District Judge.

[fol. 5293]

ANNEX 5

ENCLOSURE 1
FCC 59-144
69359

Comments of the Federal Communications Commission on S. 4231, 85th Congress, Second Session, a bill to amend the Communications Act of 1934, as amended, to permit consolidations or mergers of international telegraph and marine carriers, and for other purposes.

S. 4231 would add a new section 223, to the Communications Act to make provision for the permissive merger of two or more international telegraph and/or marine carriers. The question of whether to authorize the merger of international telegraph and marine carriers has been considered from time to time by the Congress but, thus far, no legislation authorizing or requiring such mergers has been enacted. The Commission has also had occasion at various times during the past twenty-five years to consider this problem. In the course of such considerations, as well as in the course of its regulatory activities, it has amassed a very considerable volume of material with respect to the physical facilities, operations, services, traffic volume, rates, revenues, expenses and earnings of the carriers. In addition, from time to time, it has had the benefit of staff studies regarding the question of merger wherein all of the underlying data have been reviewed and analyzed in the light of current and expected developments. Finally, the Commission has also received and considered comments on the proposed bill from certain of the carriers subject to its jurisdiction and extensive memoranda and arguments from the American Communications Association which represents the employees of certain international telegraph carriers.

The Commission's studies and data in its files indicate to it that at present the industry is operating effectively

[fol. 5294]

and efficiently; that on the average, over the past decade, its earnings experience and service provided compare favorably with that of communications monopolies subject to the Commission's jurisdiction. The Commission has found it necessary to grant only one rate increase with respect to outbound international telegraph traffic in the past decade. All of the foregoing considerations would tend to point to a conclusion that if present conditions and circumstances could be expected to continue for the foreseeable future, there would be no compelling reasons for legislation which would permit the merger of international telegraph carriers. However, there are certain major events which have taken place in recent years which have convinced the Commission that the relatively favorable position of the presently competitive international telegraph industry cannot continue much longer. These are:

(1) The growing importance of non-message telegraph services;

(2) The fact that such services require costly equipment and greatly expanded facilities;

(3) The growing reluctance of the major foreign countries to undertake the expense necessary to provide and operate duplicating channels for non-message service with competing United States carriers;

(4) The need to develop expensive new radio-transmission techniques and associated equipment for the most efficient utilization of the radio spectrum allocated to international fixed public services to enable them to expand existing services and to provide various new services;

(5) The development and installation of high capacity transoceanic telephone cables capable of being subdivided to provide a very large number of telegraph channels per voice channel; and,

(6) The constantly increasing speed of transoceanic airmail service which brings ever closer the

realization of overnight airmail service between New York and other international airports on the one hand and major cities in Europe on the other hand.

All of the foregoing indicate to the Commission that the present favorable earning position of the competing international carriers could readily be reversed in the next few years when pressures for facilities, which they could not provide individually, might divert traffic and revenues to others. Thus the maintenance of internal competition in the international telegraph field for the next several years could destroy effective competition between international telegraphy and the already existing monopolies of international telephony and airmail. Under such circumstances it appears to the Commission that permissive merger legislation should be enacted now with the end in view that a financially sound company created under prosperous conditions would be in a position to anticipate demands and to provide the necessary expensive facilities and equipment itself thereby obviating the danger that the traffic might be diverted to other channels, and enabling it to compete effectively for a fair share of the international communications dollar.

The Commission, therefore, approves permissive merger legislation in principle and recommends enactment of a statute to that effect. Should the Committee desire the detailed data on which the Commission has based the recommendations set forth herein in connection with hearings on S. 4231, or otherwise, the Commission will of course be happy to furnish it upon reasonable notice. The Commission has also analyzed S. 4231 and has specific suggestions with respect to the particular provisions in that bill. The suggestions and the reasons therefor are attached hereto as Appendix A.

Attachment: Appendix A

Adopted: February 19, 1959

[fol. 5296]

ANNEX 6

Statement of Civil Aeronautics Board Position With Respect to the Major Issues to be Considered at the IATA Traffic Conference Meetings, Cannes, September 23, 1958

I. Fare Differential for Jet Services

The Board considers it inappropriate to resolve at this time the single question of whether or not a fare differential for jet services would be reasonable. It has been the general policy of the Board that fare differentials for particular aircraft types are inconsistent with sound rate-making principles. On the basis of the facts presently before us, the Board sees no reason to depart at this time from this established policy.

The Board considers it essential that jet services be integrated into the fare structure in such a manner as will permit their operation in any class of service. Jet equipment shows promise of being more economical than aircraft presently in service. It is particularly important, therefore, that opportunity to operate jets in the low fare service be protected. This is consistent with the Board's long-standing policy that the more efficient and economical aircraft types should be used in the low fare services, at reasonable maximum utilization of seating capacity, so that the traveling public may be assured of the lowest fares consistent with economical and sound operations. In this connection, the Board notes that a critical factor determining the cost of operating jets will be the seating configuration used, and we expect the carriers to make full use of the carrying capacity of these aircraft. To the extent that jets prove to be more economical, it would appear essential that this cost advantage be reflected in lower fares so as to achieve maximum development of the traffic potential, a potential which lies predominantly in the tourist travel market which is readily responsive to reductions in fares.

II. North Atlantic Fares

Perhaps the most immediate and urgent problem facing the carriers is the need to develop a substantially broader traffic base to support the sharp increase in seating capacity which will attend the introduction of jet equipment. The economy of jet operations will be dictated, in the last analysis, by the ability of the carriers to fill seats. As noted above, the Board is convinced that the future development of air traffic in the volume now required lies primarily in penetration of the tourist travel market.

Viewed in this posture, and recognizing the responsiveness of tourist travel to changes in prices, the Board believes that the currently effective general level of fares should not be increased. In this connection, we note that North Atlantic fares were increased by approximately eight percent as of April 1, 1958. The Board considers it particularly necessary to the stimulation of traffic development that the economy-class service be retained substantially as now constituted, and that the level of fares for this service, which is significantly higher than that originally agreed to, be retained or reduced.

III. Transpacific Fares

The Board believes that the need for substantial traffic generation is likewise a factor which should be kept in mind in considering the level of fares to be applicable on transpacific routes. We take this view notwithstanding the fact that jets will probably not be placed in transpacific service during the year in question and that, as a result, the problem of developing traffic is not as urgent as in the case of the North Atlantic.

Accordingly, the Board is of the opinion that, in the absence of demonstrable reasons to the contrary, the currently effective level of transpacific fares should not be increased.

[fol. 5298]

IV. U. S.-South America Fares

The Board is aware of the present competitive situation in the Caribbean and South American areas. The carriers concerned have not as yet presented any concrete proposals designed to meet this situation. In the absence of any such proposals, the Board is not in a position to comment on this matter.

V. North Atlantic Cargo Rates

The Board reaffirms its endorsement of the specific commodity rating system as providing the soundest foundation upon which to develop the North Atlantic cargo market. This system permits penetration of new markets through selective reductions in rates without sacrifice to the maintenance of optimum carrier revenues. Accordingly, we urge continued development of the present specific commodity rate structure both through further refinement of commodity descriptions by such means as a Commodity Description Guide and through maintenance of all measures necessary to safeguard against the mis-rating of commodities.

As in the case of passenger transportation, however, the Board is concerned with the critical problem presented by the imminent sharp increase in cargo capacity accompanying introduction of jets and the consequent need for generation of a substantial volume of new traffic if cargo operations are to proceed on an economically sound basis.

The Board is convinced that two steps should be taken immediately as an initial step toward broadening the cargo market base on the North Atlantic. First, it is the Board's opinion that weight break-points should be introduced within the present specific commodity rate structure. We do not favor abandonment of the present specific rating system by substitution of a system based upon the principle of volume discounts from the general cargo rate. Further, we take no position as to whether a uniform break-point for all commodities or varying break-points depending upon the characteristics of the particular commodity in question would be more appropriate. However, we believe that

introduction of, at the very least, one break-point throughout the specific commodity rate structure is a necessary step which should be taken at this time in view of the evident need, recognized alike by the carriers and the Board, for generation of greater cargo volume.

As a second measure, the Board urges the carriers to introduce a mixed consignment rule which will provide at least as great an incentive for consolidation of mixed shipments as did the rule which expired January 1, 1957. It is the Board's opinion that, in view of the measures which have been taken in the past few years to tighten the specific commodity rate structure, the risk of incurring abuse of the type which occurred under the previous rule, is minimal.

VI. Absorption of Passenger Expenses En Route

The Board has, for a number of years, urged the carriers to tighten the provisions relating to absorption of passenger expenses at connecting points so as to prohibit this practice except as may be required in isolated situations in the interest of adequate service.

• • • • • •

the present provisions continue to permit unwarranted absorption of passenger expenses with a consequent unnecessary dilution of carrier revenues.

Accordingly, we again urge elimination of this practice on a world-wide basis except in specified situations where maintenance of adequate and competitive service requires otherwise.

VII. Reduced Fares for Cargo Agents

The Board continues to oppose the offering of free or reduced fare transportation to cargo agents and reaffirms its opinion in this regard in the *Free and Reduced Rate Transportation Case*, Docket No. 2737 *et al.*

The Board recognizes that there are certain advantages which accrue from familiarization of travel agents with the carrier's services and the tourist facilities which are avail-

[fol. 5300]

able in the area which it serves. However, it continues to be our opinion that similar familiarization in respect of cargo agents is without sufficient merit to warrant special treatment for such agents. While certain water carriers provide privileged transportation for cargo agents as well as travel agents, the competition in the cargo field between water and air carriers is not as intense as in the passenger field since the inherent characteristics of the respective transportation media largely dictate whether or not air services are used for cargo shipments.

VIII. Transatlantic Charters

In Orders Nos. E-12228 and E-12307, the Board urged the carriers to amend Resolution 045 so as to delineate in specific terms the scope of permissible travel agent activities. It is the Board's intention that the basic participation of a travel agent, in charter activity to and from the United States, be substantially limited to liaison between the group leader and the carrier and to the arranging of land tours. Specifically, the Board urges that the substance of paragraphs 2 through 7 of Part II, Section B of the Board's 1958 Transatlantic Charter Policy be incorporated into Resolution 045.

Further, the Board urges the carriers to adopt group eligibility standards which provide, as does the Board's Transatlantic Charter Policy, that organizations with substantial memberships will be eligible only when the membership solicited is located in a limited geographic area. With respect to groups originating in the United States, we suggest the maxima generally applied by the Board which has found eligible organizations having a nationwide membership of 5,000, a statewide membership of 10,000, and a membership in excess of 20,000 where the organization is located in a limited area.

The Board likewise considers it desirable that the provisions of Resolution 045 be amended so as to permit participation of immediate families (COPY ILLEGIBLE).

[fol. 5301]

IX. Documentation

In the past the Board has indicated its need for complete information on the deliberations of the Traffic Conferences to understand the background of, and to review promptly and effectively the actions taken by the members. In this connection, we note that the minutes of the meeting at Miami, Florida, last year did not reflect any discussion of transatlantic fares, although this matter was a major issue before the Conference. The Board expects the carriers to include in the minutes summaries of all deliberations, formal and informal, whether or not they result in agreed resolutions.

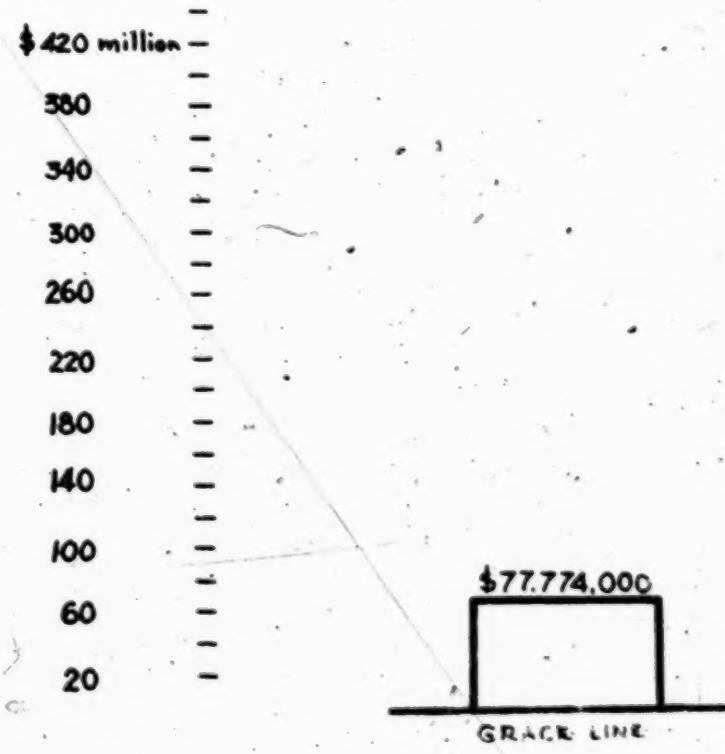
September 4, 1958.

[fol. 5302]

ANNEX 7

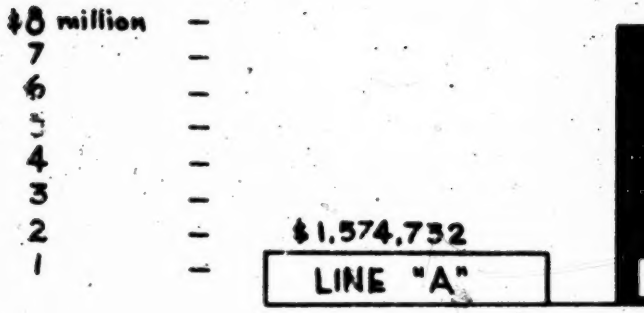
TOTAL SALES AND OPERATING REVENUES
W. R. GRACE & CO. AND GRACE LINE

1958

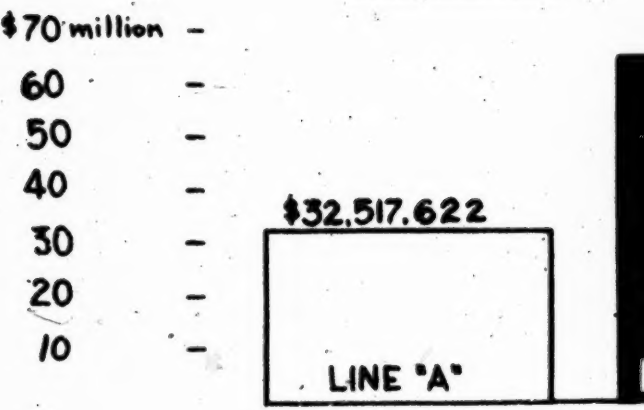


Source: Company Records

Passenger Revenue



Freight Revenue



ANNEX 9

POINTS SERVED BY PANAGRA AND GRACE LINE "A"

January-April 1959

Points Served by Panagra and Grace Line "A"(1)	Points Served by Panagra Alone	Points Served by Grace Line "A" Alone
United States	*United States*	*United States* (2)
New York City (3)	Washington, D. C. (3) Miami, Florida (3)	Philadelphia, Pa Baltimore, Md
Panama	*Panama*	*Panama*
Balboa (Cristobal)		
Colombia	*Colombia*	*Colombia*
Cali (Buenaventura)		Barranquilla Cartagena
Ecuador	*Ecuador*	*Ecuador*
Guayaquil (Puna) Manta	Quito Cuenca Esmeraldas	La Libertad
Peru	*Peru*	*Peru*
Talara Lima (Callao) Arequipa (Mollendo)		Pimentel Eten Chimbote Salaverry
Bolivia	*Bolivia*	*Bolivia*
	La Paz Cochabamba Santa Cruz Oruro Concepcion San Ignacio San Jose Robore Puerto Suarez	
Chile	*Chile*	*Chile*
Arica Antofagasta Santiago (Valparaiso)		Iquique Tocopilla Chanaral Caldera
	Argentina	
	Buenos Aires	

Notes: (1) Cities in parentheses are corresponding Grace Line "A" ports of call.

(2) Grace Line "A" vessels called infrequently at following eight additional Atlantic coast ports during April 1959:
Communipaw, N. J., Wilmington, Del., Newport News, Va., Morehead City, N. C., Wilmington, N. C., S. C., Savannah, Ga., and Kings Bay, Ga.

(3) Served by Panagra planes over routes of National Airlines between New York and Miami, Fla., Miami and Panama.

Source: Company Records

ANNEX 10

ADDITIONAL CITIES SERVED BY GRACE LINE BUT NOT SERVED BY LINE "A" OR PANAGRA (1)

LINE "B" (2)

Canada	*United States*	*United States*
Vancouver, B. C.	Tacoma/Seattle, Wash.	Yaquina Bay, Ore.
Harmac, B. C.	Bellingham, Wash.	Coos Bay, Ore.
Port Mellon, B. C.	Hoquiam, Wash.	San Francisco, Calif.
Port Alberni, B. C.	Portland, Ore.	Los Angeles, Calif.
	Longview, Wash.	Everett, Wash.
	Astoria, Ore.	San Pedro, Calif.
Mexico	*Guatemala*	*Salvador*
Acapulco	Champerico	Acajutla
Manzanillo	San Jose	La Libertad
Salina Cruz		La Union
Honduras	*Nicaragua*	*Costa Rica*
Amapala	Corinto	Puntarenas
	San Juan del Sur	
Panama	*Ecuador*	*Peru*
Puerto Armuelles	Puerto Bolivar	Puerto Chicama
		Paita
		Pacasmayo
		Supe
		Ancon
		Pisco

LINE "C" (3)

United States	*British West Indies*	*Netherlands West Indies*
Jacksonville, Florida	Kingston, Jamaica	Curacao
Port Everglades, Florida	Nassau, B. W. I.	Aruba
Venezuela	*Venezuela*	*Venezuela*
Puerto Cabello	Puerto La Cruz	Cumana
La Guaira	Guanta	Maracaibo

LINE "D" (4)

Notes (1) Some of the ports served by Line "B" are also served by Line "A" but such ports are not repeated above.

(2) Line "B" connects the Pacific Coast of Canada and the United States with the West Coast of South America via Mexico and Central America.

(3) Line "C" service connects the Atlantic Coast of the United States with the North Coast of South America via the British and Netherlands West Indies.

(4) In addition to Lines "A", "B", and "C", Line "D" is authorized to connect the United States and Canadian ports in the Great Lakes and St Lawrence River with the North Coast of South America via Cuba, Jamaica, Haiti, Dominican Republic, Trinidad, and the Netherlands West Indies. Such service is not yet operating.

Source: Company Records.

[fol. 5306]

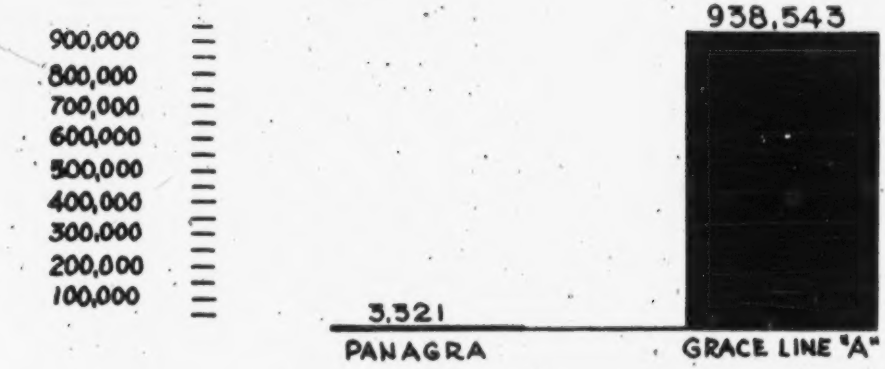
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ANNEX 11

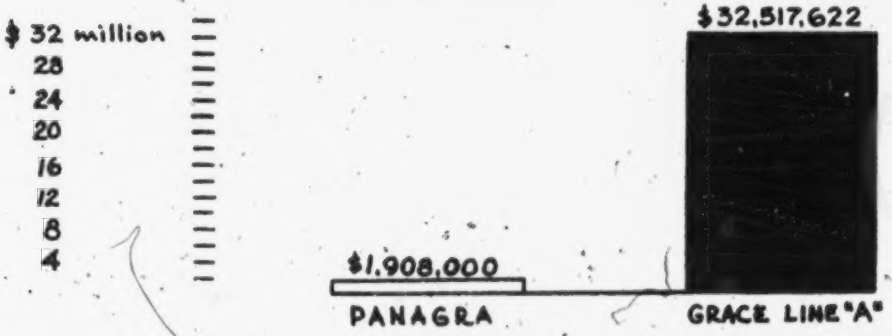
COMPARISON OF FREIGHT TRAFFIC
PANAGRA VS. GRACE LINE "A"

1958

Freight Carried
(In Short Tons)



Freight Revenue



Source: Company Records.

ANNEX 12

COMPARISON OF PASSENGER AND FREIGHT TRAFFIC

PANAGRA VS. GRACE LINE "A"

1950-1958

Year	Passengers Carried	
	Panagra	Grace Line "A"
1950	101,186	5,095
1951	118,960	5,073
1952	120,903	5,334
1953	125,690	5,127
1954	133,848	5,039
1955	137,591	4,951
1956	143,222	4,849
1957	139,409	5,028
1958	128,776	4,347

Year	Freight (In Short Tons)	
	Panagra	Grace Line "A"
1950	2,753	Not Available
1951	3,302	858,225
1952	3,036	907,025
1953	3,752	831,728
1954	3,361	739,441
1955	3,296	817,539
1956	3,485	900,714
1957	3,436	1,070,085
1958	3,321	936,585

Source: Company Records.

[fol. 5308]

ANNEX 13

COMPARISON OF FREIGHT CARRIED BY GRACE LINE "A" FROM VARIOUS COUNTRIES IN SOUTH AMERICA TO THE ATLANTIC COAST OF THE UNITED STATES WITH AMOUNT OF CARGO ENPLANED BY PANAGRA IN THOSE SAME COUNTRIES

(In Short Tons)

	1957	
	Panagra	Grace Line "A"
West Coast of Colombia	37	70,831
Ecuador	920	85,264
Peru	122	280,844
Chile	349	294,550
Total, 4 areas	1,428	731,489

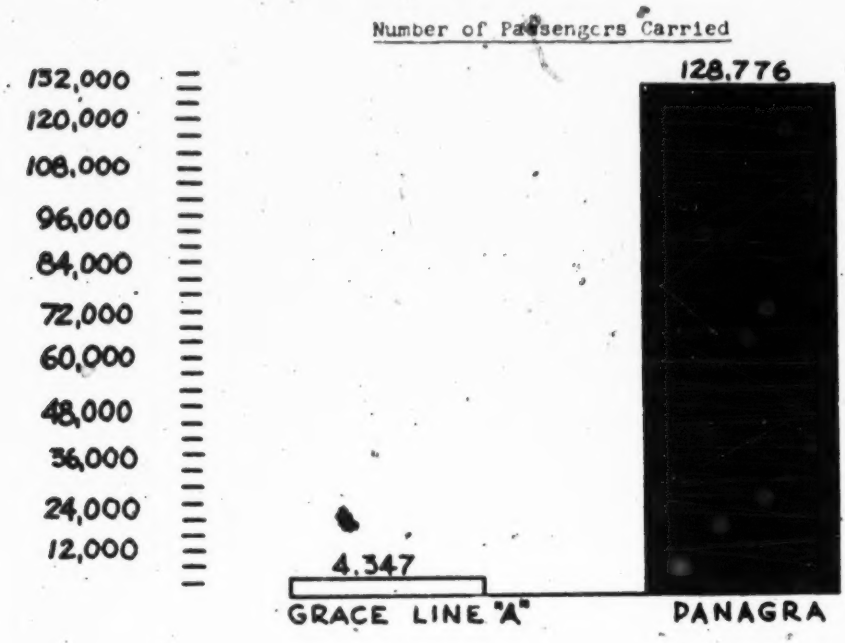
	1955	
	Panagra	Grace Line "A"
West Coast of Colombia	25	81,191
Ecuador	1,847	84,800
Peru	111	172,421
Chile	73	208,133
Total, 4 areas	2,056	546,545

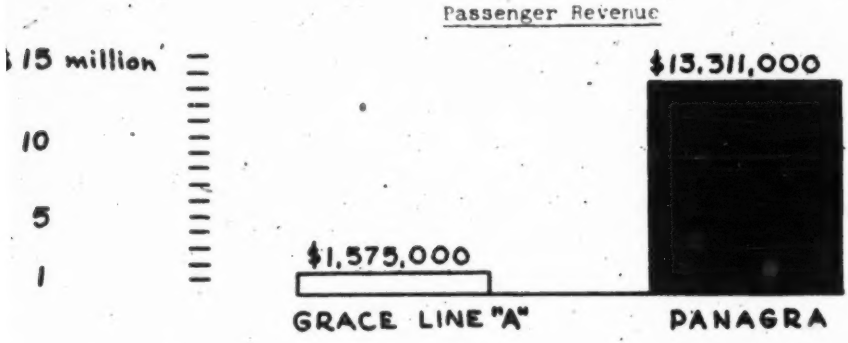
Note: The figures for Grace Line "A" include only cargo carried from the designated country to the Atlantic Coast of the United States. The figure for Panagra includes all cargo enplaned in the country regardless of destination.

Source: Company Records.

ANNEX 14

COMPARISON OF PASSENGER TRAFFIC
PANAGRA VS. GRACE LINE "A"
1958





ource: Company Records

[fol. 5310]

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ANNEX 15

NUMBER OF PASSENGERS TRAVELLING BETWEEN THE UNITED STATES AND SANTIAGO, CHILE PANAGRA VS. GRACE LINE "A"

1957

On Page 157 of its Trial Brief the Antitrust Division states that Panagra participated in carrying an average of 224 passengers per month between the Northeastern United States and Santiago (Chile), while Grace Line "A" carried an average of 121 passengers between the same United States area and Valparaiso. This statement is based upon the figures shown in GS-79.

The Antitrust Division has relied on CAB Origin and Destination Surveys for the months of March and September 1957 in arriving at the monthly average of Panagra passengers. This source shows the air origin and air destination of all passengers. The Maritime Administration records used for Grace Line figures reflect port of embarkation and port of debarkation. Thus a person travelling between Chicago and Valparaiso on Grace Line via New York would be counted as a traveller between the Northeastern United States and Chile. However, a passenger travelling by air from Chicago and going to Santiago via Panagra would be counted as a Chicago passenger and would be excluded from the count for the Northeastern United States. Nor would a Panagra passenger between New York and Santiago be included if he began or ended his journey outside the United States.

Since the Antitrust Division's comparison includes Grace Line passengers whose true origin is outside the Northeastern United States and excludes Panagra passengers whose true origin is outside that area, it maximizes Grace Line traffic and minimizes Panagra traffic, thereby reducing the disparity between the two.

To provide a more accurate comparison of Panagra and Grace traffic between the United States and Santiago, the basis for comparison has been broadened to include, in addition to Northeastern United States, Eastern United States, total United States and total United States including foreign travel passing through the United States. Traffic in the last category is included only when the routing clearly indicates passage through the United States.

	Monthly Average 1957		Total Year 1957	
	Panagra	Grace Line	Panagra	Grace Line
Between Santiago, Chile and				
Northeastern U. S. (1)				
Antitrust Division's Figures	224	121		1,452
Company Records (2)	226	113	2,714	1,354
Eastern U. S. (3)	261	113	3,132	1,354
Total U. S.	379	116	4,542	1,386(4)
Total U. S. Including Foreign Travel through U. S.	426	116	5,116	1,386(4)

(1) Includes New England States, New York, New Jersey, Pennsylvania, Delaware, Maryland and the District of Columbia.

(2) The difference between the Antitrust Division's figures and the figures prepared from Grace Line records may be accounted for by the difference in source documents. The statistics maintained by Grace Line, Inc. are taken from Passenger Manifests on a terminated voyage basis. The Maritime Administration figures used by the Antitrust Division are taken from Forms 7801 and 7802 and apparently represent the number of passengers outbound on a sailing basis and number of passengers inbound on an arrival basis.

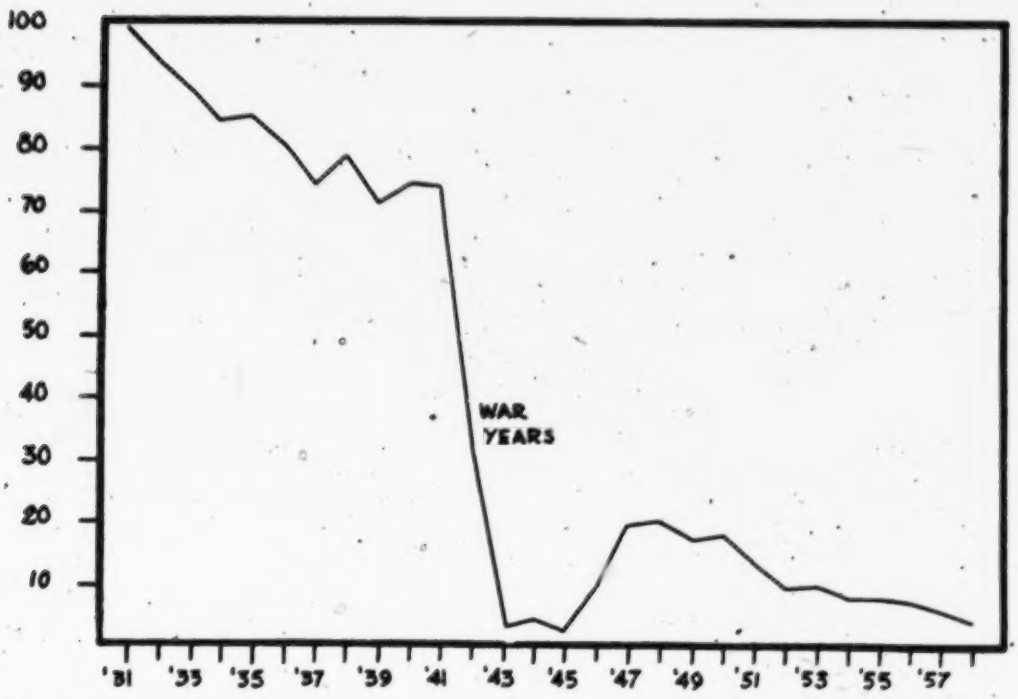
(3) Includes Northeastern U. S., Virginia, N. Carolina, S. Carolina, Georgia and Florida.

(4) Includes 32 passengers between the West Coast of the U. S. and Valparaiso during 1957 on Line "B".

Source: Company Records.

GRAPHS SHOWING DECLINE IN PASSENGER TRAFFIC BY SEA
BETWEEN THE UNITED STATES AND VARIOUS SOUTH AMERICAN COUNTRIES

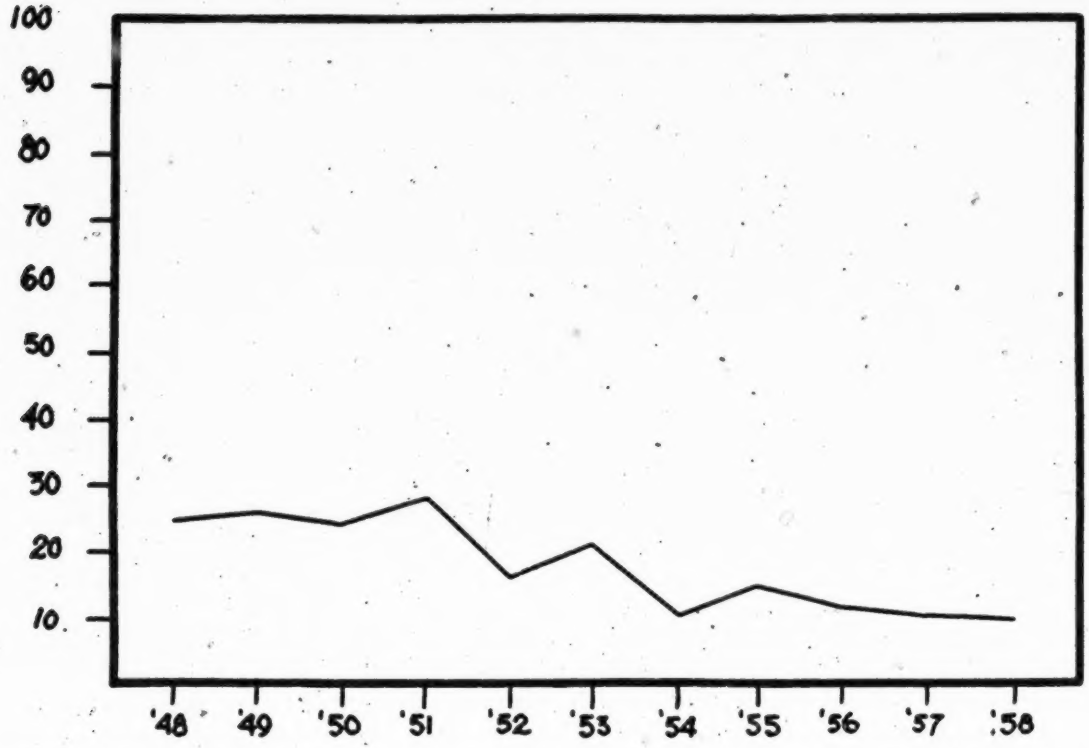
A Sea Travel as a Percentage of Total Travel between the U. S. and Colombia
1931 - 1958



Note: Years ended June 30.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

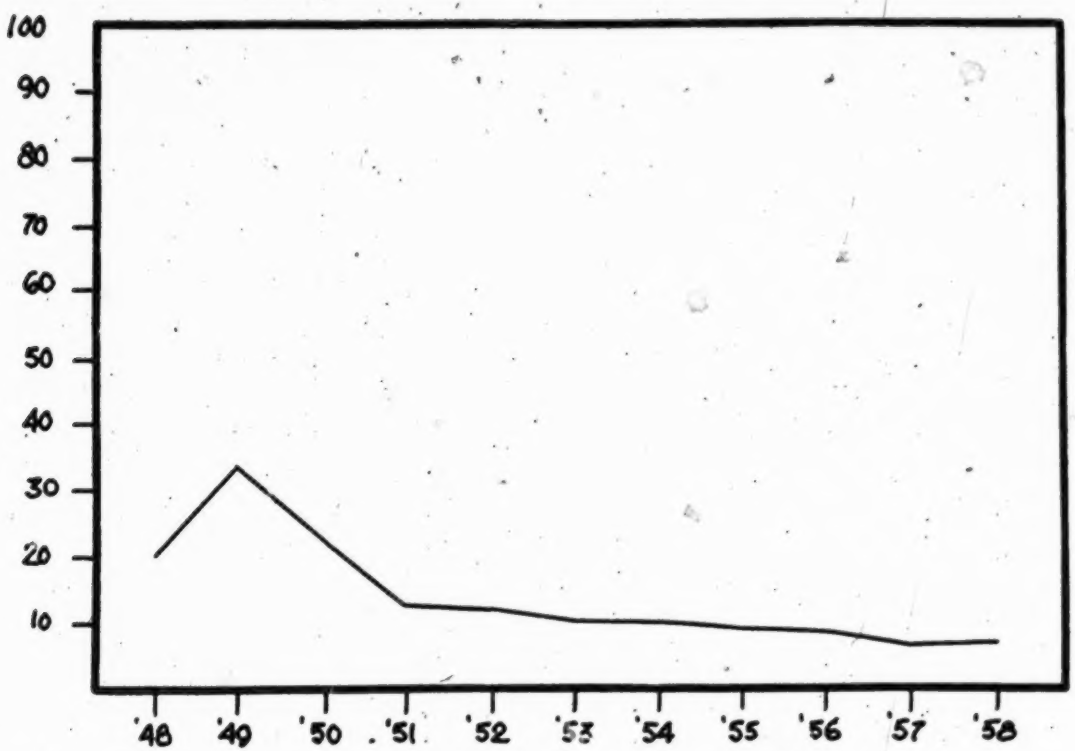
B. Sea Travel as a Percentage of Total Travel between the U. S. and Ecuador 1948 - 1958



Note: Years ended June 30. INS statistics for years prior to 1948 considered unreliable.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

C. Sea Travel as a Percentage of Total Travel between the U. S. and Peru
1948 - 1958

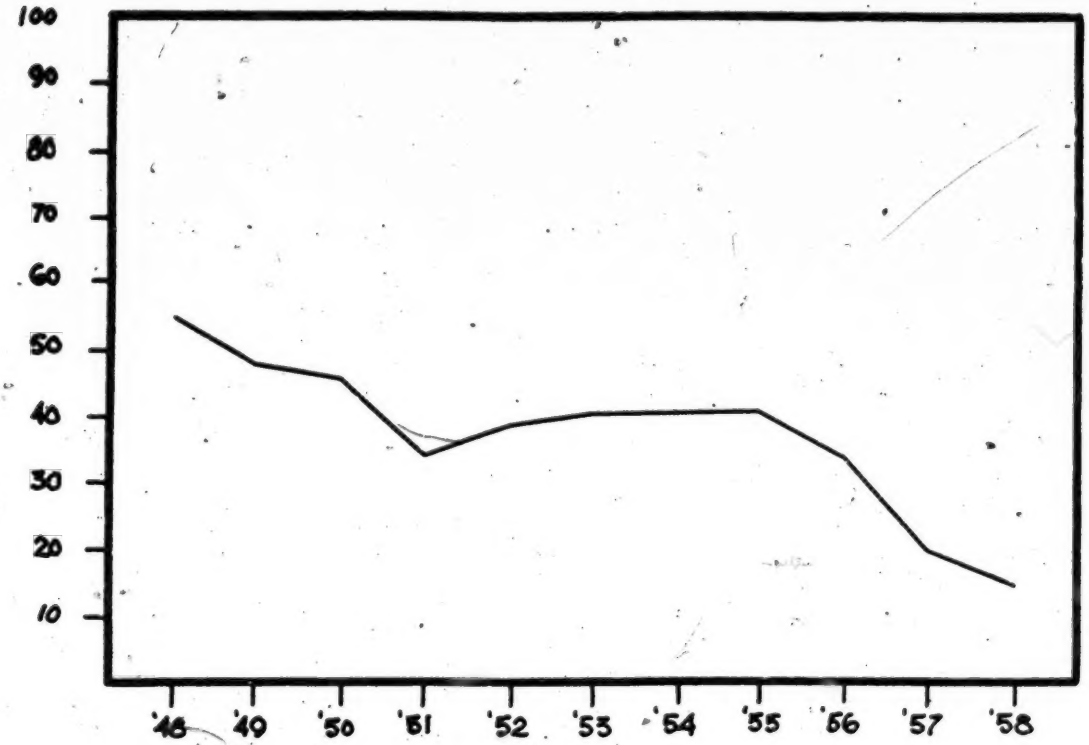


Note: Years ended June 30. INS statistics for years prior to 1948 considered unreliable.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

[fol. 5313].

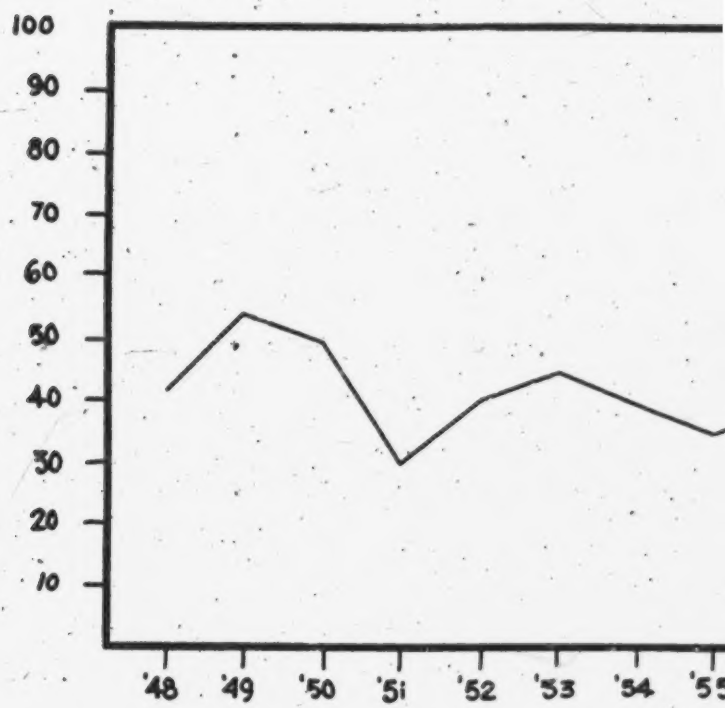
D. Sea Travel as a Percentage of Total Travel between the U. S. and Chile
1948 - 1958



Note: Years ended June 30. INS statistics for years prior to 1948 considered unreliable.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

E. Sea Travel as a Percentage of Total Travel between t
1948 - 1958



Note: Years ended June 30. INS statistics for years prio
unreliable.

Source: Figures developed from Immigration and Naturaliza
Department of Justice, published statistics.

[fol. 5315]

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ANNEX 16E

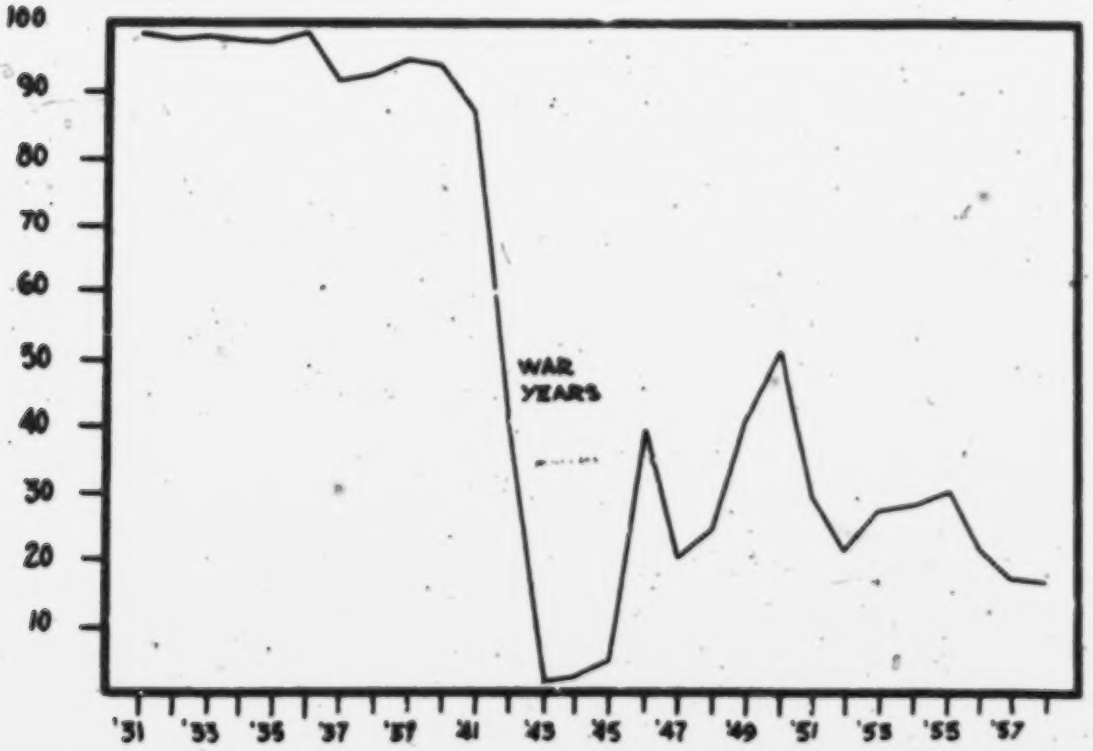


...n the U. S. and Argentina

...rior to 1948 considered

...ization Service, U. S.

F. Sea Travel as a Percentage of Total Travel between the U. S. and Brazil
1931 - 1958



Note: Years ended June 30.

Source: Figures developed from Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

ANNEX 17A

COMPARISON OF AIR AND SEA TRAVEL BETWEEN THE UNITED STATES AND VARIOUS COUNTRIES IN SOUTH AMERICA

(Years Ended June 30)

A. Between the United States and Colombia.

1931-1958

	By Sea	By Air	Total	% Sea to Total
1931	3,120	23	3,143	99.2%
1932	2,529	179	2,708	93.3
1933	2,129	266	2,395	88.9
1934	2,161	403	2,564	84.3
1935	2,531	442	2,973	85.1
1936	2,494	561	3,055	81.6
1937	2,961	1,040	4,001	74.0
1938	3,673	988	4,661	78.8
1939	3,531	1,363	4,894	72.1
1940	4,301	1,454	5,755	74.7
1941	4,907	1,703	6,610	74.2
1942	2,071	4,239	6,310	32.8
1943	184	6,367	6,551	2.8
1944	206	4,327	4,533	4.5
1945	99	4,230	4,329	2.3
1946	772	6,828	7,600	10.1
1947	2,306	9,447	11,753	19.6
1948	3,989	15,964	19,953	20.0
1949	3,219	14,852	18,071	17.8
1950	3,731	16,762	20,493	18.2
1951	3,487	21,619	25,106	13.9
1952	3,373	27,516	30,889	10.0
1953	3,575	31,425	35,000	10.2
1954	2,888	32,679	35,567	8.1
1955	3,043	34,918	37,961	8.0
1956	2,700	32,930	35,630	7.6
1957	1,813	28,679	30,492	5.9
1958	1,676	38,178	39,854	4.2

Source: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

[fol. 5318]

ANNEX 17B

B. Between the United States and Ecuador.

1948-1958

	By Sea	By Air	Total	% Sea to Total
1948	614	1,906	2,520	24.4%
1949	556	1,620	2,176	25.6
1950	739	2,352	3,091	23.9
1951	1,222	3,051	4,273	28.6
1952	862	4,354	5,216	16.5
1953	1,483	5,447	6,930	21.4
1954	805	6,262	7,067	11.4
1955	1,196	6,731	7,927	15.1
1956	987	7,312	8,299	11.9
1957	922	7,794	8,716	10.6
1958	1,175	10,470	11,645	10.1

NOTE: INS statistics for years prior to 1948 considered unreliable.

SOURCE: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

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ANNEX 17C

C. Between the United States and Peru.

1948-1958

	By Sea	By Air	Total	% Sea to Total
8	1,789	6,978	8,767	20.4%
9	3,725	7,280	11,005	33.8
0	2,123	7,230	9,353	22.7
1	1,533	10,015	11,548	13.3
2	2,162	14,885	17,047	12.7
3	1,941	17,089	19,030	10.2
4	1,832	16,513	18,345	10.0
5	1,663	16,223	17,886	9.3
6	1,913	19,721	21,634	8.8
7	1,581	23,106	24,687	6.4
8	1,774	23,651	25,425	7.0

TE: INS statistics for years prior to 1948 considered unreliable.

RCE: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

[fol. 5320]

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ANNEX 17D

D. Between the United States and Chile.

1948-1958

	By Sea	By Air	Total	% Sea to Total
1948	3,251	2,714	5,965	55.0%
1949	2,568	2,754	5,322	48.3
1950	2,697	3,179	5,876	46.0
1951	2,569	4,938	7,498	34.1
1952	2,350	3,710	6,060	38.8
1953	2,453	3,616	6,069	40.4
1954	2,306	3,366	5,672	40.7
1955	2,673	3,922	6,595	41.0
1956	2,596	4,836	7,432	35.0
1957	2,331	10,237	12,568	19.0
1958	2,279	14,434	16,713	14.0

Note: INS statistics for years prior to 1948 considered unreliable.

Source: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

ANNEX 17E

E. Between the United States and Argentina. 1948-1958

	By Sea	By Air	Total	% Sea to Total
1948	7,928	11,054	18,982	42.0%
1949	8,993	7,700	16,693	53.9
1950	6,790	6,867	13,657	49.7
1951	5,300	12,795	18,095	29.3
1952	6,996	10,744	17,740	39.4
1953	6,959	8,619	15,578	44.7
1954	6,957	10,971	17,928	38.8
1955	7,331	13,627	20,958	35.0
1956	7,797	12,065	19,862	39.3
1957	8,548	12,770	21,318	40.1
1958	7,248	14,492	21,740	33.3

Note: INS statistics for years prior to 1948 considered unreliable.

Source: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

[fol. 5322]

ANNEX 17F

F. Between the United States and Brazil.

1931-1958

	By Sea	By Air	Total	% Sea to Total
1931	4,478	81	4,559	98.2%
1932	3,029	83	3,112	97.3
1933	2,884	64	2,948	97.8
1934	3,436	98	3,534	97.2
1935	3,761	115	3,876	97.0
1936	4,545	58	4,603	98.7
1937	5,278	449	5,727	92.2
1938	4,903	358	5,261	93.2
1939	5,367	287	5,654	95.0
1940	6,731	413	7,144	94.2
1941	8,408	1,256	9,664	87.0
1942	4,009	5,374	9,383	42.7
1943	388	28,001	28,389	1.4
1944	306	16,054	16,360	1.9
1945	442	8,085	8,527	5.2
1946	5,353	8,197	13,550	39.5
1947	4,359	17,208	21,567	20.2
1948	6,358	19,785	26,143	24.3
1949	11,194	16,157	27,351	40.9
1950	13,508	12,667	26,175	51.6
1951	10,121	24,709	34,830	29.1
1952	8,046	27,833	35,879	22.4
1953	8,829	23,236	32,065	27.2
1954	9,015	23,059	32,074	28.1
1955	10,051	24,820	34,871	30.1
1956	8,732	29,759	38,491	22.7
1957	8,768	41,712	50,480	17.4
1958	8,677	42,580	51,257	16.9

SOURCE: Published statistics of Immigration and Naturalization Service, U. S. Department of Justice.

ANNEX 18

COMPARISON OF TRAVEL TIMES
PANAGRA VS. GRACE LINE "A"

NEW YORK TO:	Panagra		Grace Line "A"	
	A.	B.	C.	D.
Balboa, Canal Zone	10 hours		6½ to 7½ days	
Cali (Buenaventura), Colombia	13 "		7½ to 9½ "	
Guayaquil (Puna), Ecuador	14	to 16 hours	10	to 12 "
Talara, Peru	14	to 17½ "	11	to 13 "
Lima (Callao), Peru	16	to 20 "	12½	to 14 "
Arequipa (Mollendo), Peru	18	to 20 "	15½	to 17 "
Arica, Chile	19	to 21 "	16	to 17 "
Antofagasta, Chile	20	to 24 "	17½	to 20 "
Santiago (Valparaiso), Chile	21½	to 27 "	20	to 21½ "

NOTE: Cities in parentheses are corresponding Grace Line "A" ports of call. Travel times, shown for Panagra are shortest (Column A) and longest (Column B) elapsed times per the April 1959 schedule. Travel times shown for Grace Line "A" are average elapsed times for the combination cargo/passenger ships (Column C) and the C-2 freighters (Column D) during the year 1958.

SOURCE: Company Records.

[fol. 5324]

ANNEX 19

COMPARISON OF PRESENT FARES

NEW YORK TO VARIOUS POINTS IN SOUTH AMERICA

PANAGRA VS. GRACE LINE "A"

	PANAGRA (2)		GRACE LINE "A" (3)			
	Winter Season (Southbound: January 1—February 28)					
	Per Person		Minimum Per Person		Maximum Per Person	
New York to: (1)	Tourist Class	First Class	(2 per cabin)	(1 per cabin)	(2 per cabin)	(1 per cabin)
Guayaquil (Puna)	$240.80	$314.80	$450.00	$ 750.00	$660.00	$1,320.00
Lima (Callao)	308.80	399.80	515.00	860.00	755.00	1,510.00
Santiago (Valparaiso)	414.80	546.10	645.00	1,075.00	945.00	1,890.00
	Regular Season (Southbound: March and June 1 to December 31)					
	Per Person		Minimum Per Person		Maximum Per Person	
	Tourist Class	First Class	(2 per cabin)	(1 per cabin)	(2 per cabin)	(1 per cabin)
Guayaquil (Puna)	$240.80	$314.80	$415.00	$ 695.00	$590.00	$1,180.00
Lima (Callao)	308.80	399.80	475.00	795.00	675.00	1,350.00
Santiago (Valparaiso)	414.80	546.10	595.00	995.00	845.00	1,690.00
	Reduced Season (Southbound: April 1—May 31)					
	Per Person		Minimum Per Person		Maximum Per Person	
	Tourist Class	First Class	(2 per cabin)	(1 per cabin)	(2 per cabin)	(1 per cabin)
Guayaquil (Puna)	$240.80	$314.80	$380.00	$ 635.00	$530.00	$1,060.00
Lima (Callao)	308.80	399.80	435.00	725.00	610.00	1,220.00
Santiago (Valparaiso)	414.80	546.10	545.00	910.00	760.00	1,520.00

Notes:

(1) Cities in parentheses are corresponding Grace Line "A" ports of call.

(2) Figures shown for Panagra are all year round one-way southbound fares per adult. Upper and lower berths available on first class flights between Miami and South America at an additional charge of $55.00 and $75.00 respectively, regardless of destination.

(3) Figures shown for Grace Line "A" are minimum and maximum (depending on location of cabin) one way southbound fares per adult on the combination cargo/passenger ships (52 passengers) assuming one or two adults per cabin. Most cabins will accommodate 3 persons but the lowest per person fare on this basis is higher than the minimum per person fare shown for cabins which accommodate only 2 persons. Line "A" also offers passenger service on its freighters (8 or 12 passengers), however, during 1958 this service averaged only 3 passengers outwardbound from the Atlantic Coast of the U. S. and 1 passenger inwardbound per voyage. Passenger rates per adult on the freighter service are: New York to Puna, $290.00; New York to Callao, $370.00 and New York to Valparaiso, $450.00.

Source: Company Records.

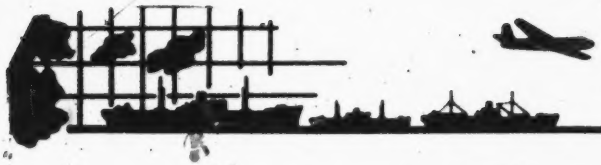

IRLIFT A





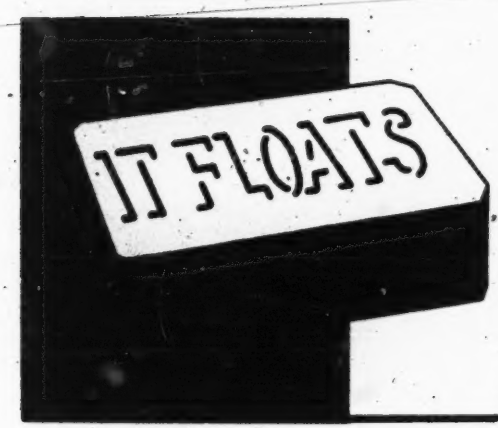
[fol. 5327]





UNITED STATES TRANSOCEAN TRANSPORT REQUIREMENTS IN PEACETIME ARE LARGE

- SHIPS CARRY 99.66% OF THE COMMERCIAL TONNAGE.
- SHIPS CARRY 99.15% OF THE MILITARY TONNAGE.



OVERALL, SHIPS CARRY 99.501% OF THE TOTAL TRANSOCEAN TONNAGE



PREPARED BY THE OFFICE OF

A. Burdon
Committee of American
Steamship Lines
1000 Conn Ave



SEA AND AIR TRANSPORTATION SYSTEMS

F THE CHIEF OF NAVAL OPERATIONS

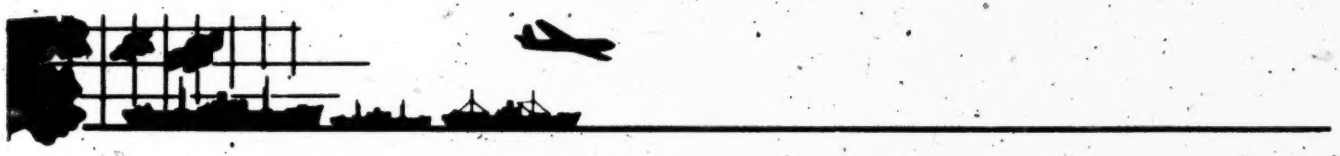
SEA AND AIR *Transportation* SYSTEMS

REVISED APRIL 1957

[fol. 5326]

1

5207



IF THE GREEN BAR REPRESENTS THE AIRLIFTED TON MILES OVERSEAS DURING THE LAST YEAR, THEN THE BROWN BAR IS NECESSARY TO DISPLAY THE SEALIFTED TON MILES TO THE SAME SCALE.

AIRLIFT



SEALIFT





MILLIONS OF TON MILES OF TRANSOCEANIC TRAFFIC

COMMERCIAL AIRLIFT

604



MILITARY AIRLIFT

669

AIR TRANSPORT ACCOUNTS
FOR LESS THAN 1/2 OF 1%



COMMERCIAL SEALIFT

175,546

MILITARY SEALIFT

78,254

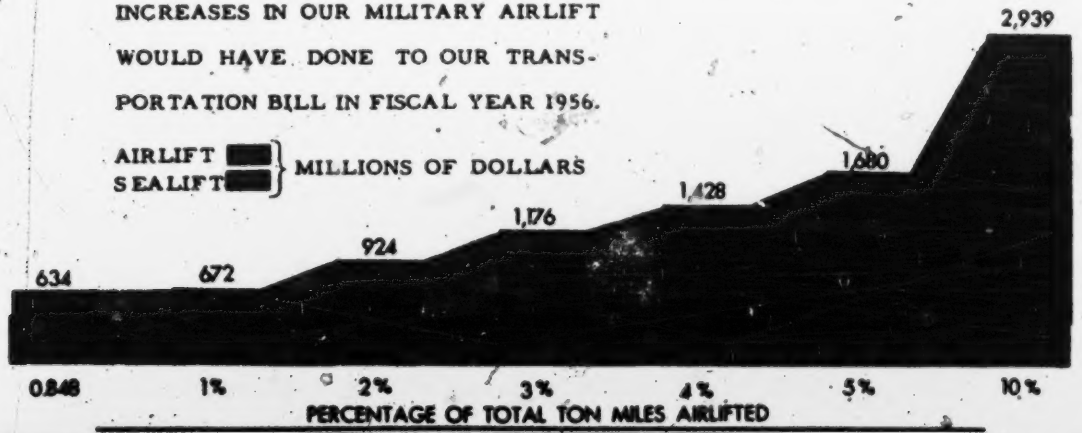
THE U. S. ECONOMY REQUIRED THIS TONNAGE FLOW LAST YEAR

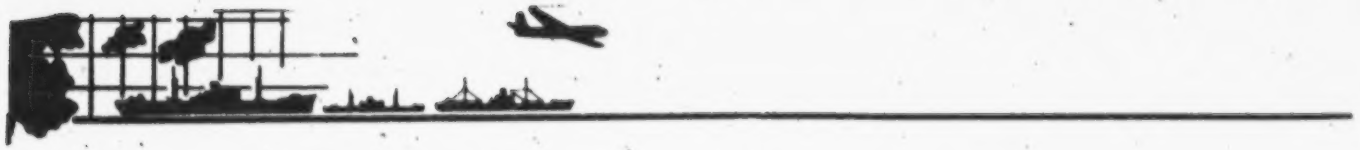
[fol. 5330]



AIRLIFT IS COSTLY . . . ABOUT 40 TIMES AS MUCH AS SEALIFT, TON MILE FOR TON MILE

NOTICE WHAT SMALL PERCENTAGE INCREASES IN OUR MILITARY AIRLIFT WOULD HAVE DONE TO OUR TRANSPORTATION BILL IN FISCAL YEAR 1956.





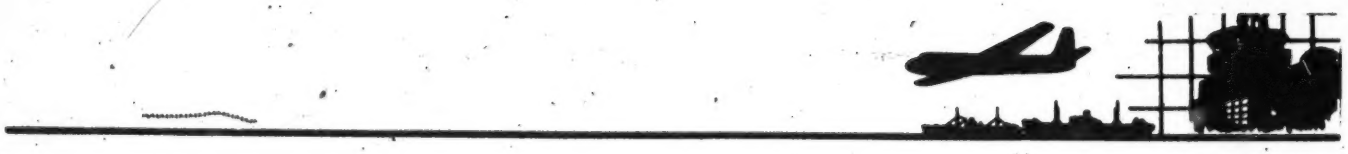
SEALIFT IS FASTER THAN AIRLIFT FOR THE REQUIRED MASSIVE LOADS, BECAUSE REPEATED AIR TRIPS ELIMINATE THE TIME ADVANTAGE, AND BECAUSE LONG AIR TRIPS USE MORE FUEL WEIGHT THAN THE LOAD LIFTED.

USUALLY, THIS AIR FUEL MUST BE PRE-PLACED OR REPLACED BY SURFACE SHIP.

TO COMPARE THE MERITS OF MILITARY SEALIFT AND AIRLIFT, LET'S LOOK AT A MODERATE-SIZED, LONG RANGE JOB WHICH BOTH COULD DO--UNDER IDEAL CONDITIONS OF AIRLIFT CAPABILITY--THAT IS, IF THE AIRLIFT FUEL IS ALREADY IN PLACE AT THE OVERSEAS TERMINAL AND ENROUTE STOPS.

HERE'S WHAT EACH TYPE LIFT WOULD REQUIRE IN THE WAY OF EQUIPMENT AND TIME.

THIS IS NOT A PAGE BORDER BUT



WHAT WE PUT IN . . . A COMPARISON

- MANHOURS TO BUILD THE HULL OR AIR FRAME AND INSTALL SUBCONTRACTED EQUIPMENT.
- UNIT COST BASED ON 30 AIRCRAFT PER ORDER.
- 9 HOURS/PLANE/DAY EVERY DAY FOR A YEAR (TWICE PRESENT MILITARY USAGE).
- PROGRESSIVE MAINTENANCE FOR AIRCRAFT.
- SHIP OVERHAUL AND VOYAGE REPAIRS ALLOWED FOR.

		
TOTAL OFFICERS AND CREW	21	49
MANHOURS TO BUILD	600,000	740,000
UNIT COST	$5,000,000	$4,000,000
MANHOURS TO MAINTAIN PER YEAR	36,500	23,460

SEALIFT IS MASSIVE

[fol. 5336]

5217



WHAT WE GET BACK

- PLANE LOADED TO CRITICAL OVERSEAS CAPABILITY.
- SHIP FULLY LOADED.
- OVERHAUL AND MAINTENANCE TIME ALLOWED FOR.
- LOADING, UNLOADING AND TIMES TO BERTH AND UNBERTH ALLOWED FOR.

NOTE THE AMOUNT BY WHICH THE SHIP OUTCARRIES THE AIRCRAFT FOR EACH OF THE COMPONENTS OF THE INPUT.

	MILLIONS		RATIO
PER OPERATOR	0.87	13.7	15.7
PER CONSTRUCTION MAN HOUR	30.5	907.5	29.7
PER INITIAL DOLLAR	3.7	167.9	45.4
PER MAINTENANCE MAN HOUR	501.4	28,407.4	56.6
ANNUAL TON MILES	18.3	671.6	36.7

SEALIFT IS BIG



TO DEPLOY 10,000 TONS 8,000 MILES BY AIR OR BY SEA

AIR

122 SUPER-AIRCRAFT (4 TRIPS EACH)

5 TANKER LOADS OF FUEL

24 DAYS

APPROXIMATELY 100% OF OUR MILITARY OVERSEAS AIRLIFT CAPACITY

SEA

1 MARINER TYPE SHIP (1 TRIP) . . . 22 DAYS

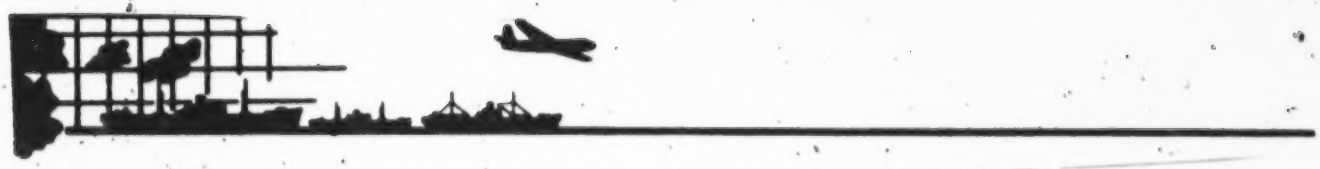
APPROXIMATELY 1% OF OUR MILITARY OVERSEAS SEALIFT CAPACITY

122 SUPER-AIRCRAFT AND 5 BIG SHIPS TO POSITION FUEL OR 1 BIG SHIP

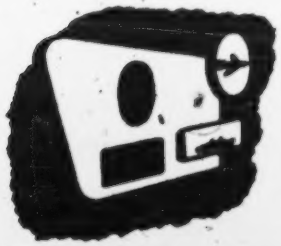
A CONTINUATION OF THE SEALIFT BAR

[fol. 5334]

5215



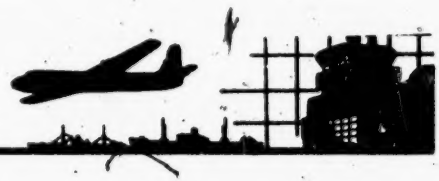
ANOTHER CASE . . . HAD WE STARTED AN ARMED FORCE OUT BY SEA, HOWEVER, AND THEN HAD WANTED TO EQUIP THEM WITH MODIFIED FUZES FOR THEIR AMMUNITION, OR OTHER ITEMS TO ACCOUNT FOR A CHANGE IN THEIR MISSION, A FEW AIRCRAFT WOULD DELIVER TO THEIR DESTINATION BY THE TIME THEY ARRIVE . . . AND NO OTHER TRANSPORTATION SYSTEM CAN DO THIS.



THE RIGHT POD IN THE RIGHT HOLE

WHAT IS A CORRECT USE OF AIRLIFT IN PEACETIME? SPECIALLY QUALIFIED PERSONNEL, AND CARGO FOR WHICH BREAKAGE COSTS OR INVENTORY CONSIDERATIONS RENDER SEA TRANSPORT COSTLY, CAN BE MOST ECONOMICALLY TRANSPORTED BY AIR.

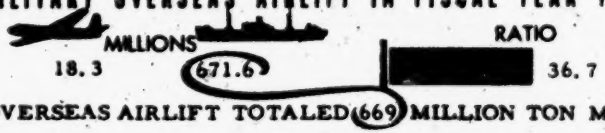
SEALIFT IS BIG



DID YOU NOTICE WHAT THAT ONE VICTORY SHIP CARRIED?

671.6 MILLION TON MILES IN SAILING FROM NEW YORK TO BREMERHAVEN AND RETURN IN A YEAR OF OPERATION.

COMPARE IT TO THE TOTAL MILITARY OVERSEAS AIRLIFT IN FISCAL YEAR 1956.



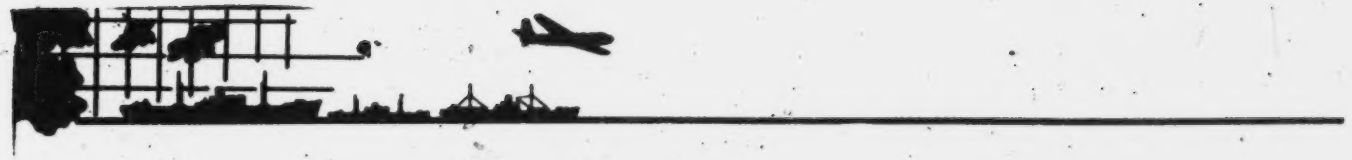
FISCAL YEAR 1956 MILITARY OVERSEAS AIRLIFT TOTALED 669 MILLION TON MILES

IN ANY SITUATION OF LIMITATION . . . THE BUDGET IN PEACETIME, TOTAL RESOURCES IN WAR . . . WE EXCHANGE FORMS OF TRANSPORT, ONE FOR ANOTHER . . . AND AT AN UNEQUAL RATE.

USING THE MOST EFFICIENT AIRCRAFT IN PROSPECT, IT WOULD STILL BURDEN OUR RESOURCES AS MUCH TO SEND ONE TON BY AIR AS TO SEND 25 TONS BY SEA. THAT IS THE RATE WE WILL PAY TO EXCHANGE SEALIFT FOR AIRLIFT.

SEALIFT IS MASSIVE

[fol. 5338]



WE **"ROB PETER TO PAY PAUL"** ....BUT EVERY UNIT WE PAY PAUL WILL TAKE AT LEAST **25** FROM PETER.

SINCE IT WILL TAKE THE SAME RESOURCES AND EFFORT TO MOVE ONE TON BY AIR AS **25** TONS BY SEA, THEN WE MUST BE SURE THAT THE ONE UNIT SENT BY AIR WILL **REALLY** SUBSTITUTE FOR **25** SENT BY SEA.

IN A HYPOTHETICAL SITUATION, THEN WE MIGHT HAVE TO MAKE A CHOICE OF SENDING OVERSEAS:

75 DIVISIONS BY SEALIFT, OR
50 BY SEA AND ONE BY AIR, OR
25 BY SEA AND TWO BY AIR, OR
3 BY AIRLIFT.

AT THE EXPENDITURE OF APPROXIMATELY THE SAME RESOURCES AND EFFORT IN EACH CASE.

TO THE SCALE SHOWN ON PAGE 6

ANNEX 22

COMPARISON OF CARGO EXPENSE PANAGRA AND GRACE LINE "A"

Panagra

The direct, out-of-pocket expense of operating Panagra's DC-4 all-cargo service from July, 1957 (its inauguration) through January, 1959 was $531,524.(1)

During the nineteen month period the all-cargo service flew 1,491,755 revenue ton miles.(2)

The average cost per revenue ton mile to Panagra for operating the all-cargo service during the nineteen month period was, therefore:

Expenses Per:	Dollars and Cents
Revenue Ton Mile	$0.356

Grace Line "A"

During the yea. 1958 Grace Line "A" freighter service(3) incurred direct out-of-pocket expenses of $12,043,484.(4)

The above expenses were all incurred directly in the operation of Grace Line "A" C-2 freighter service between the U. S. and the West Coast of South America during 1958. Had the Grace Line not operated this service during 1958, the above expenses would not have been incurred and they are, therefore, considered direct, out-of-pocket expenses. No depreciation expense ($550,289) or allocation of overhead expenses ($1,590,203) is included.

During the year 1958, the freighter service of Grace Line "A" steamed 1,845,522,392 revenue ton miles.(2)

The average cost per revenue ton mile to Grace Line for its C-2 freighter service on Line "A" during the year 1958 was, therefore:

Expenses Per:	Dollars and Cents
Revenue Ton Mile	$0.00653

[fol. 5346]

Panagra and Grace Line "A"

A comparison of revenue ton mile costs between Panagra's all-cargo service and Grace Line "A" freighter service is as follows:

Expenses Per:	Dollars and Cents — Panagra	Grace Line "A"
Revenue Ton Mile	$0.356	$0.00653

NOTES:

(1) Broken down as follows:

1. Crew Salaries	$ 74,633
2. Direct aircraft maintenance	302,482
3. Fuel	128,657
4. Hull insurance	9,405
5. Crew expenses	7,516
6. Landing fees	28,175
7. Ground handling	20,569
8. Custom overtime	5,771
9. Visa expenses	2,840
10. Colombian communication charges	529
11. Sales Commissions, advertising, insurance on cargo	80,927
	$541,524

The above costs (with the exception of items 7, 8, 9, and 11) were arrived at by taking total direct costs for DC-4 aircraft (which are used both in all-cargo and passenger service) per aircraft mile and allocating them to the all-cargo service on the basis of the number of miles flown in all cargo service. Items 7, 8, and 9 are actual expenses incurred by the all-cargo service. Item 11 was estimated at 10% of revenue. None of the above expenses would have been incurred had the all-cargo service not been operating and they are, therefore, considered to be direct, out-of-pocket expenses. No depreciation expense (estimated at $4,124) or allocation of overhead expense (estimated at $30,930) is included.

(2) A revenue ton mile defined as a short ton (by weight) of revenue producing cargo carried one statute mile.

(3) Figures for Grace Line "A" freighter service and Panagra's all-cargo service have been used rather than figures for Grace Line "A" combination passenger/freight service and Panagra regular passenger-cargo flights because of the difficulty of allocating expenses between the passenger and freight functions.

(4) Broken down as follows:

1. Vessel operating expenses	$ 4,754,885
2. Fuel	982,065
3. Port charges	563,653
4. Canal tolls	520,761
5. Other voyage expense	83,291
6. Cargo handling	4,388,224
7. Freight commissions	603,659
8. Claims and insurance	146,946
	$12,043,484

Source: Company Records.





THIS

OBVIOUSLY, WE WILL BE DEPENDENT UPON SEALIFT FOR THE MAIN MILITARY OVERSEAS MOVEMENT FOR THE FORESEEABLE FUTURE . . NOTHING IN PROSPECT PROMISES SIGNIFICANT ALTERATION TO THIS FACT. THERE IS, HOWEVER, NO SUBSTITUTE FOR AIRLIFT IN THE AREA OF THOSE SMALL LOADS WHICH HAVE NOT BEEN . . OR COULD NOT BE . . FORESEEN IN TIME FOR SEALIFT. WE NEED BOTH . . BUT EACH IN ITS PROPER ROLE.

". . . FOR WANT OF A NAIL THE SHOE WAS LOST; FOR WANT OF A SHOE . . . , ETC."

-BENJ. FRANKLIN "POOR RICHARD'S ALMANAC" (1737)

NOT THIS

THAT CRITICAL NAIL BELONGS IN THE AIRLIFT

...BUT WE SHOULDN'T AIRLIFT THE HORSE!

THIS IS THE SEALIFT BAR

WERE THIS DEPICTED FOR WAR THIS BAR WOULD HAVE [illegible] FOR NEARLY [illegible] FEET MORE

15

[fol. 5340]

5221

ANNEX 21

COMPARISON OF FREIGHT RATES

PANAGRA AND GRACE LINE "A"

APRIL 1959

NEW YORK TO:	PANAGRA(1) Shipments Under 100 Pounds Per Pound	PANAGRA(1) Shipments Over 3300 Pounds Per Pound	PANAGRA(1) Shipments of 2000 Pounds	GRACE LINE "A"(2) Per Revenue Ton
Guayaquil (Puna)	$ .80	$ .41	$ 940.00	$80.56
Lima (Callao)	1.02	.51	1,180.00	92.00
Santiago (Valparaiso)	1.44	.70	1,660.00	90.00

(1) An airline pound is defined as a pound of weight or 250 cubic inches of volume.
(2) A steamship revenue ton is defined as 2000 pounds or 40 cubic feet of volume.

The Panagra rates shown are the highest (for shipments under 100 pounds) and the lowest (for shipments over 3300 pounds) general commodity rates. The cost of a shipment via Panagra weighing exactly 2000 pounds is also shown using the applicable rate. Roughly half of Panagra's cargo shipments move at the general commodity rate, which is higher than specific commodity rates.

The Grace Line "A" rate shown is the general cargo rate per revenue ton which is substantially higher than some of the specific commodity rates. Most Grace Line "A" traffic moves at specific commodity rates. The rates for most imports from South America carried by Line "A" are on a weight basis. The rates for some exports are on a volume basis which results in a greater rate per ton of weight than the rate shown above.

Some examples of specific commodity rates between New York and Lima (Callao) are as follows:

	Between New York and Lima (Callao) — PANAGRA Per Pound(1)	PANAGRA Per 2000 Pounds	GRACE LINE "A" Per Revenue Ton(2)
Auto Parts (3)	$ .54	$1,080.00	$34.00
Pens and Pencils (3)	.61	1,220.00	92.00

	Between New York and Santiago (Valparaiso) — PANAGRA Per Pound(1)	PANAGRA Per 2000 Pounds	GRACE LINE "A" Per Revenue Ton(2)
Auto Parts (3)	$ .63	$1,260.00	$32.00*
Drugs (4)	.75	1,500.00	90.00*

* Plus 3% Chilean Tax.
(1) Pound defined as a pound of weight or 250 cubic inches of volume.
(2) Revenue ton defined as 2000 pounds or 40 cubic feet of volume.
(3) Panagra rate shown applicable only to shipments over 220 pounds.
(4) Panagra rate shown applicable only to shipments over 550 pounds.

[fol. 5344]

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In addition to the specific commodity rates shown above for Grace Line "A", there are numerous lower specific commodity rates for bulky items for which Panagra has no corresponding rate. Some examples follow:

New York to:	Callao	Valparaiso(1)
	Per Revenue Ton(2)	
Wheat	$21.00	$19.00
Flour	23.00	21.00
Asphalt	25.00	23.00
Steel beams	27.00	25.00
Sand, gravel	30.00	28.00
Edible tallow	32.00	30.00

(1) Plus 3% Chilean Tax.

(2) Revenue ton defined as 2000 pounds or 40 cubic feet.

Source: Company Records.

ANNEX 23

PAN AMERICAN-GRACE AIRWAYS, INC.
PROFIT AND LOSS—ALL-CARGO OPERATION
July 1957-January 1959

	Revenue	Total Expenses	Profit (Loss)
1957			
July	$ 18,280	$ 18,833	$ (553)
August	24,102	23,233	869
September	32,348	31,188	1,160
October	21,672	21,925	(253)
November	22,944	26,032	(3,088)
December	17,984	21,282	(3,298)
1958			
January	20,052	27,442	(7,390)
February	22,358	22,600	(242)
March	19,077	24,707	(5,630)
April	16,160	24,140	(7,980)
May	18,203	23,847	(5,644)
June	28,355	33,976	(5,621)
July	31,490	39,663	(8,173)
August	36,954	44,221	(7,267)
September	40,069	37,772	2,297
October	37,293	36,869	424
November	20,989	23,422	(2,433)
December	46,083	45,015	1,068
1959			
January	34,867	40,416	(5,549)
TOTAL	$509,280	$566,583	($57,303)

[fol. 5348]

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ANNEX 24

COMPARISON OF AVAILABLE CAPACITY FILLED WITH FREIGHT

BRANIFF SYSTEM, BRANIFF INTERNATIONAL AND PANAGRA

1950, 1953, 1955, 1957

	FREIGHT TON MILES				
Year	Panagra	Braniff International	Braniff International as % of Panagra	Braniff System(1)	Braniff System as % of Panagra
1950	1,815,688	948,090	52.2%	3,968,721	218.6%
1953	2,849,848	1,038,730	36.4	4,995,351	175.3
1955	2,863,903	961,022	33.6	5,789,328	202.1
1957	4,533,261	871,695	19.2	7,367,955	162.5

	AVAILABLE TON MILES				
Year	Panagra	Braniff International	Braniff International as % of Panagra	Braniff System	Braniff System as % of Panagra
1950	29,038,262	16,008,618	55.1%	67,302,344	231.8%
1953	33,160,140	24,334,789	73.4	116,588,540	351.6
1955	37,219,399	22,705,176	61.0	140,052,987	376.3
1957	40,597,864	22,751,751	56.0	219,588,905	540.9

	PERCENTAGE OF AVAILABLE LIFT CAPACITY FILLED WITH FREIGHT(2)		
Year	Panagra	Braniff International	Braniff System(1)
1950	6.3%	5.9%	5.9%
1953	8.6	4.3	4.3
1955	7.7	4.2	4.1
1957	11.2	3.8	3.4

NOTES: (1) Figures for Braniff System include both Freight and Express statistics of Braniff Domestic.

(2) Percentage arrived at by dividing freight ton miles by available ton miles.

SOURCE: *Summary of U. S. International (and Domestic) Airline Revenues and Expenses (and Traffic)* Compiled by American Aviation Publications from official C. A. B. data.


BOTH S

SEALIFT AND A


IRLIFT

ANNEX 28



ANNEX 30B

B. Comparison on Same Basis Used by the Antitrust Division in Exhibit GS-10 Except Western South America Redefined to Includ areas Served by Both Panagra and Braniff.

Area	Number of Passengers — March	Number of Passengers — September	Average per Month — Number	Average per Month — % of Total
Between U. S. and Western S. A. (1)				
Total U. S. flag	3,254	4,114	3,684	100.0%
Pan American and Panagra	2,827	3,036	2,932	79.6
Pan American	671	750	711	19.3
Panagra	2,156	2,286	2,221	60.3
With Pan American	2,042	2,215	2,129	
With Other Airlines	114	71	92	
Other U. S. flag carriers	427	1,078	752	20.4

The Antitrust Division in Exhibit GS-10 defines Western South America to include Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires. This definition includes areas served by Panagra which Braniff is not authorized to serve (Western Colombia and Chile). It does not, however, include areas served by Braniff which Panagra is not authorized to serve, (Eastern Colombia and Paraguay). A proper comparison would include these areas. The above schedule, therefore, includes in the definition of Western South America all of Colombia, Ecuador, Peru, Bolivia, Chile, Paraguay, and Argentina, except Buenos Aires.

(1) Includes Government definition of Western South America plus Eastern Colombia and Paraguay

[fol. 5356]

ANNEX 30C

C. Comparison of Passengers Travelling Between the U. S. and Western South America, as Defined by the Antitrust Division in Exhibit GS-10 Except That Each Carrier is Credited With All Traffic in which It Participated.

Area	Number of Passengers — March	Number of Passengers — September	Average per Month — Number	Average per Month — % of Total
Between U. S. and Western S. A. (1)				
Total U. S. flag	2,747	3,013	2,880	100.0%
Pan American and Panagra	2,271	2,407	2,339	81.2
Pan American	123	135	129	4.5
Panagra	2,148	2,272	2,210	76.7
With Pan American	2,035	2,203	2,119	
With Other Airlines	113	69	91	
Other U. S. flag carriers	476	606	541	18.8

The Antitrust Division's Exhibit GS-10 is distorted because it attributes to Panagra all traffic in which Panagra had any participation with another carrier whereas it does not attribute to other U. S. flag carriers traffic in which they participate with Panagra or Pan American. The above schedule attributes to each carrier all traffic in which it had any participation. This results in some traffic being counted twice so that the "Total U. S. Flag" figure exceeds the total number of passengers who actually traveled on these routes. This schedule, however, represents a more accurate picture of the traffic shared by the respective carriers.

(1) Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

ANNEX 29

COMPARISON OF TOTAL ASSETS
BRANIFF (TOTAL SYSTEM) AND PANAGRA
1946—1957
(As of December 31)

Year	Braniff	Panagra
1946	$ 7,188,000	$10,821,000
1947	12,680,000	11,826,000
1948	11,610,000	17,435,000
1949	10,736,000	16,371,000
1950	10,681,000	18,315,000
1951	14,980,000	19,778,000
1952	26,572,000	15,012,000
1953	33,265,000	15,664,000
1954	35,137,000	19,453,000
1955	30,132,000	27,111,000
1956	51,915,000	25,960,000
1957	59,066,000	25,476,000

Source: Braniff figures taken from annual reports to its stockholders. Panagra figures taken from Company Records.

[fol. 5354]

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ANNEX 30A

AIR TRAVEL BETWEEN THE UNITED STATES AND WESTERN SOUTH AMERICA ON U. S. FLAG CARRIERS

MARCH AND SEPTEMBER 1957

PASSENGERS TRAVELING BY AIR BETWEEN SPECIFIED AREAS USING U. S. FLAG CARRIERS

A. Comparison on same basis used by the Antitrust Division in Exhibit GS-10 (1).

Area	Number of Passengers		Average per Month	
	March	September	Number	% of Total
Between U. S. and Western S. A. (2)				
Total U. S. flag	2,633	2,907	2,770	100.0%
Pan American and Panagra	2,271	2,407	2,339	84.4
Pan American	123	135	129	4.6
Panagra	2,148	2,272	2,210	79.8
With Pan American	2,035	2,203	2,119	
With Other Airlines	113	69	91	
Other U. S. flag carriers	362	500	431	15.6

Notes: (1) Above figures were developed from the O-D Survey of the C. A. B. for March and September 1957, the same source used by the Antitrust Division in Exhibit GS-10. Figures above differ only slightly from those shown in GS-10 with the variance in Total U. S. Flag passengers totalling only twelve for the month of September. The major variances from Exhibit GS-10 occur in the breakdown of Panagra passengers between Pan American and Other Airlines. In the breakdown of Panagra passengers shown above, Pan American has been credited if it participated to any extent in a passenger's journey. Presumably, the Antitrust Division used some other basis for allocating Panagra traffic.

(2) Includes Western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, except Buenos Aires.

ANNEX 30D

D. Comparison Based on the Geographical Redefinition Described in "B" Together With the Correction for Distortion Described in "C".

Area	Number of Passengers		Average per Month	
	March	September	Number	% of Total
Between U. S. and Western S. A. (1)				
Total U. S. flag	3,421	4,322	3,872	100.0%
Pan American and Panagra	2,827	3,036	2,932	75.7
Pan American	671	750	711	18.3
Panagra	2,156	2,286	2,221	57.4
With Pan American	2,042	2,215	2,129	
With Other Airlines	114	71	92	
Other U. S. flag carriers	594	1,286	940	24.3

This schedule combines the geographical correction made in "B" above with the additional correction made in "C" above. It provides the most accurate basis for comparing the share of traffic carried by the respective U. S. flag carriers between the entire U. S. and Western South America.

(1) Includes Government definition of Western South America plus Eastern Colombia and Paraguay.

[fol. 5358]

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ANNEX 30E

E. Comparison of Passengers Travelling by Air on U. S. Flag Carriers Between Eastern U. S. As Shown in Exhibit GS-10, and Redefined Western South America (B) Crediting Each Carrier With all Traffic in which It Participated (C).

Area	Number of Passengers		Average per Month	
	March	September	Number	% of Total
Between Eastern U. S. (1) and Western South America (2)				
Total U. S. flag	2,201	2,937	2,569	100.0%
Pan American and Panagra	1,916	2,121	2,019	78.6
Pan American	385	345	365	14.2
Panagra	1,531	1,776	1,654	64.4
With Pan American	1,462	1,728	1,595	
With Other Airlines	69	48	59	
Other U. S. flag carriers	285	816	550	21.4

This schedule shows travel by air between the Eastern U. S., as defined in Exhibit GS-10, and Western South America as redefined in "B" above with the additional correction for distortion made in "C" above. The figures above provide the most accurate basis for comparing the share of traffic by the respective U. S. flag carriers between the Eastern U. S. and Western South America.

(1) Includes the New England States and the States of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

(2) Includes all of Colombia, Ecuador, Peru, Bolivia, Chile, Paraguay, and Argentina, except Buenos Aires.

ANNEX 30F

F. Comparison of Passengers Travelling By Air on U. S. Flag Carriers Between Central U. S. and Redefined Western South America (B) Crediting Each Carrier With all Traffic in which It Participated (C).

Area	Number of Passengers — March	Number of Passengers — September	Average per Month — Number	Average per Month — % of Total
Between Central U. S. (1) and Western South America (2)				
Total U. S. flag	596	625	610	100.0%
Pan American and Panagra	414	410	412	67.5
Pan American	146	172	159	26.1
Panagra	268	238	253	41.4
With Pan American	240	228	234	
With Other Airlines	28	10	19	
Other U. S. flag carriers	182	215	198	32.5

The Antitrust Division has emphasized in their exhibits Panagra's share of air travel on U. S. flag carriers between the Eastern U. S., the one area of the U. S. served directly by Panagra planes, and Western South America. It is just as logical to highlight travel between the Central U. S., an area served by Braniff both on its domestic and international routes and Western South America. The figures above show passenger travel between the Central U. S. states served by Braniff and Western South America as redefined in "B" above with the additional correction made in "C" above.

(1) Includes the States of Texas, Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Iowa, Tennessee, Illinois, Minnesota, Colorado, North Dakota, South Dakota and Nebraska.

(2) Includes all of Colombia, Ecuador, Peru, Bolivia, Chile, Paraguay and Argentina, except Buenos Aires.

Source: *Origin—Destination Airline Revenue Passenger Survey*, International Section, March and September 1957, published by the Air Transport Association of America from information compiled by the Civil Aeronautics Board.

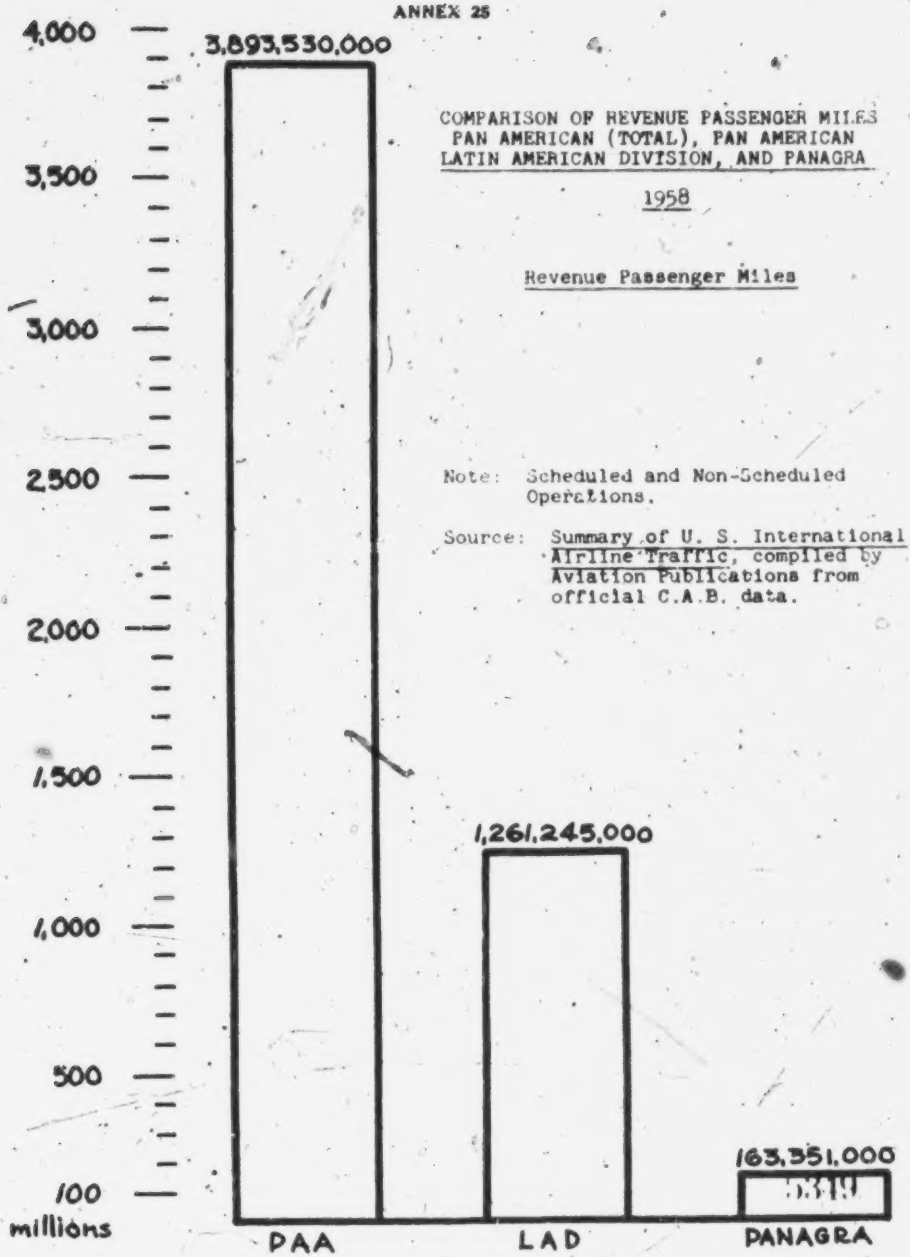
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ANNEX 25

COMPARISON OF REVENUE PASSENGER MILES
PAN AMERICAN (TOTAL), PAN AMERICAN
LATIN AMERICAN DIVISION, AND PANAGRA

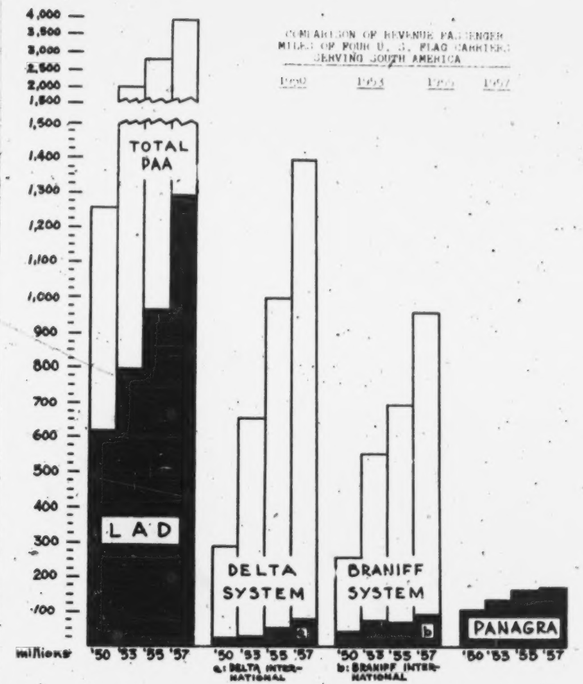
1958

Revenue Passenger Miles



Note: Scheduled and Non-Scheduled Operations.

Source: Summary of U. S. International Airline Traffic, compiled by Aviation Publications from official C.A.B. data.



Note: Included Scheduled and Non-Scheduled Operations.

Source: Summary of U. S. International Airline Traffic, compiled by American Aviation Publications from Official C.A.B. data.

TRAFFIC RATINGS - U. S. SCHEDULED AIRLINES

1957

Rank	Airline	Originating Passengers
1.	Eastern	8,145,138
2.	American	7,649,153
3.	United	6,293,653
4.	Trans World	4,817,764
5.	Capital	3,949,844
6.	Delta	2,723,132
7.	Pan American	2,661,169
8.	BRANIFF	2,047,875
9.	Northwest	1,493,930
10.	National	1,430,037
11.	Western	1,379,650
12.	Continental	826,659
13.	Northeast	764,882
14.	Mo. Central	658,810
15.	Allegheny	440,389
16.	Mohawk	418,341
17.	Hawaiian	416,524
18.	Piedmont	401,168
19.	Ozark	390,753
20.	Pacific (SWA)	337,200
21.	West Coast	294,062
22.	Trans Texas	243,348
23.	Caribair	226,501
24.	Frontier	219,360
25.	Southern	211,916
26.	Trans Pacific	180,168
27.	Lake Central	160,784
28.	Bonanza	150,423
29.	PANAGRA	139,409
30.	Central	118,867
31.	Pac. Northern	107,875
32.	N. Y. Airways	68,060
33.	Ellis	63,168
34.	Alaska	62,943
35.	Chi Helicopter	55,310
36.	Alaska Coast	51,841
37.	Los Angeles	31,283
38.	Wien Alaska	28,413
39.	North Conso.	20,446
40.	Cordova	19,738
41.	Reeve	8,907
	Aexico	
	Aerovias	
	Flying Tiger	
	Riddle	
	Seaboard & Western	
	Slick	
	TOTAL	49,670,893

Rank	Airline	Revenue Passenger Miles (000 omitted)
1.	American	5,142,594
2.	United	4,868,308
3.	Eastern	4,815,246
4.	Trans World	4,396,498
5.	Pan American	3,876,073
6.	Capital	1,513,845
7.	Delta	1,401,049
8.	Northwest	1,247,865
9.	BRANIFF	962,987
10.	National	953,260
11.	Western	702,727
12.	Continental	363,254
13.	Northeast	246,095
14.	PANAGRA	173,736
15.	Mo. Central	106,723
16.	Pacific Northern	105,820
17.	Piedmont	83,808
18.	Mohawk	81,405
19.	Allegheny	77,011
20.	Pacific (SWA)	72,994
21.	Ozark	63,835
22.	Hawaiian	62,907
23.	Frontier	59,343
24.	Trans Texas	55,330
25.	West Coast	45,128
26.	Southern	38,318
27.	Bonanza	33,044
28.	Trans Pacific	28,192
29.	Lake Central	25,549
30.	Alaska	25,233
31.	Central	23,726
32.	Caribair	16,048
33.	Wien Alaska	9,621
34.	Reeve	7,027
35.	North Conso.	6,630
36.	Cordova	5,135
37.	Alaska Coast	4,629
38.	Ellis	3,382
39.	N. Y. Airways	1,276
40.	Los Angeles	1,131
41.	Chi Helicopter	899
	Aexico	
	Aerovias	
	Flying Tiger	
	Riddle	
	Seaboard & Western	
	Slick	
	TOTAL	31,707,677

Rank	Airline	Mail Ton-Miles
1.	Pan American	31,213,926
2.	United	26,238,388
3.	Trans World	20,850,372
4.	American	17,911,668
5.	Northwest	16,727,002
6.	Eastern	9,555,251
7.	Delta	3,919,633
8.	Capital	3,574,984
9.	BRANIFF	3,351,774
10.	Western	2,097,231
11.	National	1,772,215
12.	Pac. Northern	1,120,959
13.	Continental	1,023,538
14.	PANAGRA	740,605
15.	Alaska	592,144
16.	Wien Alaska	398,752
17.	Northeast	355,095
18.	Mo. Consol.	277,202
19.	Reeve	195,789
20.	Mo. Central	191,862
21.	Flying Tiger	178,404
22.	Riddle	151,139
23.	Trans Texas	137,689
24.	Frontier	122,152
25.	Ozark	117,004
26.	Southern	105,722
27.	Slick	100,654
28.	Piedmont	98,259
29.	Allegheny	96,940
30.	Pacific (SWA)	93,401
31.	Mohawk	63,871
32.	Hawaiian	48,530
33.	Alaska Coast	48,116
34.	Los Angeles	46,415
35.	Central	43,790
36.	Cordova	42,856
37.	West Coast	42,084
38.	Bonanza	31,640
39.	Lake Central	30,541
40.	Chi Helicopter	26,412
41.	Ellis	24,049
42.	N. Y. Airways	19,360
43.	Caribair	18,300
44.	Trans Pacific	14,368
	Aexico	
	Aerovias	
	Seaboard & Western	
	TOTAL	143,823,086

Rank	Airline	Express Ton-Miles
1.	United	9,552,104
2.	American	9,003,998
3.	Trans World	7,345,486
4.	Eastern	5,297,267
5.	Delta	2,881,983
6.	Northwest	2,703,169
7.	Capital	2,373,007
8.	BRANIFF	1,419,089
9.	Western	1,095,196
10.	Slick	719,265
11.	National	660,509
12.	Continental	457,645
13.	Flying Tiger	422,116
14.	Mo. Central	364,478
15.	Riddle	323,532
16.	Northeast	248,591
17.	Allegheny	202,791
18.	Ozark	186,102
19.	Aexico	171,791
20.	Mohawk	160,925
21.	Lake Central	160,526
22.	Southern	129,797
23.	Piedmont	115,884
24.	Trans Texas	95,785
25.	Frontier	91,389
26.	Pacific (SWA)	54,949
27.	Bonanza	27,829
28.	Central	26,543
29.	West Coast	25,683
30.	Los Angeles	22,511
31.	N. Y. Airways	11,407
	Aerovias	
	Alaska	
	Alaska Coast	
	Caribair	
	Chi Helicopter	
	Cordova	
	Ellis	
	Hawaiian	
	Northern Consolidated	
	Pacific Northern	
	Pan American	
	PANAGRA	
	Reeve	
	Seaboard & Western	
	Trans Pacific	
	Wien Alaska	
	TOTAL	46,351,347

Rank	Airline	Freight Ton-Miles
1.	Pan American	96,594,104
2.	American	86,063,699
3.	Flying Tiger	82,986,089
4.	United	57,450,315
5.	Slick	49,799,653
6.	Trans World	34,268,074
7.	Riddle	31,554,761
8.	Seaboard & Western	17,938,744
9.	Northwest	17,097,443
10.	Eastern	16,765,965
11.	Delta	9,608,457
12.	Aerovias	8,848,739
13.	BRANIFF	5,948,866
14.	National	5,561,563
15.	PANAGRA	4,533,861
16.	Capital	4,516,907
17.	Alaska	3,791,202
18.	Pacific Northern	2,964,863
19.	Western	2,930,684
20.	Wien Alaska	2,472,488
21.	Aexico	2,335,399
22.	Continental	1,560,822
23.	Cordova	1,439,232
24.	Hawaiian	1,427,977
25.	Mo. Consol.	873,238
26.	Frontier	745,782
27.	Northeast	645,483
28.	Reeve	377,877
29.	Trans Texas	281,706
30.	Mohawk	250,624
31.	Allegheny	171,431
32.	Piedmont	167,511
33.	Ozark	163,434
34.	Trans Pacific	126,947
35.	Central	86,383
36.	Pacific (SWA)	78,992
37.	Bonanza	74,419
38.	West Coast	59,983
39.	Alaska Coast	48,425
40.	Caribair	39,290
41.	Ellis	32,545
42.	N. Y. Airways	7,037
43.	Southern	2,638
	Chi Helicopter	
	Lake Central	
	Los Angeles	
	North Central	
	TOTAL	552,713,052

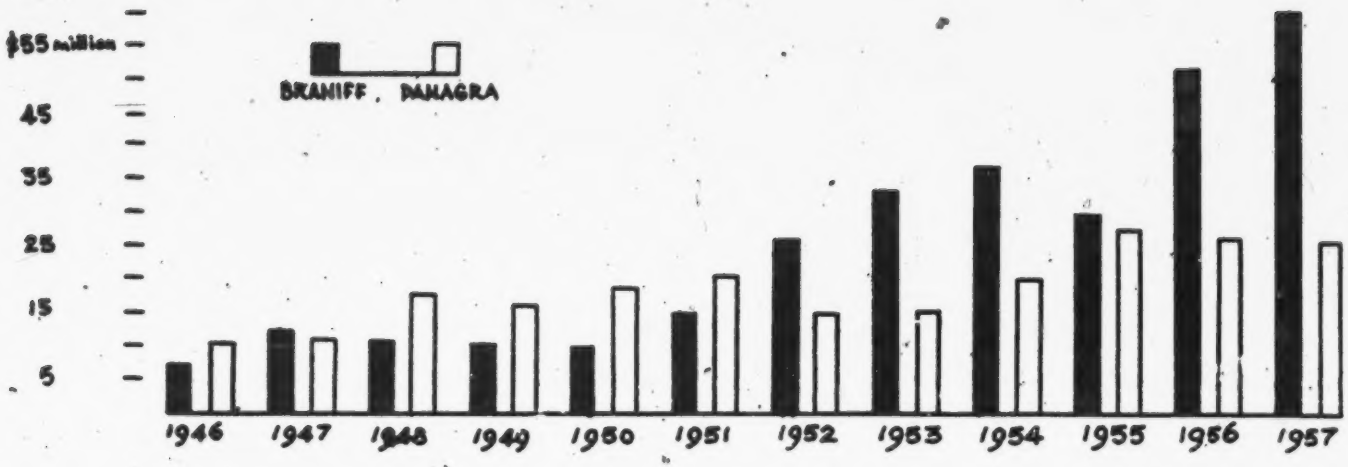
Notes: In above tabulations, domestic and international operations of companies are combined.
Figures include both scheduled and non-scheduled operations.
Mail ton-miles include air parcel post and first class mail carried by air.

Source: American Aviation, American Aviation Publications, Inc. April 21, 1958 issue, page 79.

COMPARISON OF TOTAL ASSETS
BRANIFF (TOTAL SYSTEM) AND PANAGRA

1946 - 1957

(As of December 31)



Source: Braniff figures taken from annual reports to its stockholders. Panagra figures taken from Company Records.

ANNEX 28

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[fol. 5352]

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MICRO CARD
TRADE MARK ®

21

MATTHEW BENDER & COMPANY
MB-63

microcard

1224

ANNEX 31

COMPARISON OF AIRLINE SERVICE FROM THE UNITED STATES TO SOUTH AMERICA BRANIFF INTERNATIONAL AND PANAGRA

APRIL 1959

		MONDAY				TUESDAY		WEDNESDAY				THURSDAY			FRIDAY				SATURDAY		SUNDAY		
		PANAGRA		BRANIFF		PANAGRA		PANAGRA		BRANIFF		PANAGRA		BRANIFF	PANAGRA		BRANIFF		PANAGRA		PANAGRA		BRANIFF
	Flight No.	F (a) 701	T (b) 733	F/T 985	F/T 403	F (a) 701	T (b) 719	F (a) 701	T (b) 733	F/T 603	F/T 985	F (a) 701	T (b) 733	F/T 971	F (a) 701	T (b) 719	F/T 985	F/T 991	F (a) 701	T (b) 733	F (a) 701	T (b) 719	F/T 971
	Equipment	DC-7	DC-6B	DC-6	DC-6	DC-7	DC-6B	DC-7	DC-6B	DC-6	DC-6	DC-7	DC-6B	DC-7C	DC-7	DC-6B	DC-6	DC-6	DC-7	DC-6B	DC-7	DC-6B	DC-7C
NEW YORK	Cumulative Elapsed Time																						
WASHINGTON		1:40(c)		1:40(c)		1:40(c)		1:40(c)			1:40(c)	1:40(c)		1:35(c)	1:40(c)		1:40(c)	1:40(c)	1:40(c)		1:40(c)		1:35(c)
DALLAS					1:10					1:10													
HOUSTON																							
MIAMI		5:00	4:40	5:30		5:00	4:35	5:00	4:40		5:30	5:00	4:40	4:55	5:00	4:35	5:30	5:30	5:00	4:40	5:00	4:35	4:55
HAVANA					6:35					6:35													
PANAMA		10:10	10:05	10:40	11:05	10:10	10:10	10:10	10:05	11:05	10:40	10:10	10:05	10:00	10:10	10:10	10:40	10:45	10:10	10:05	10:10	10:10	10:00
BOGOTA				13:14							13:14						13:14						
CALI							12:50									12:50						12:50	
QUITO							14:45									14:45						14:45	
GUAYAQUIL			14:15		14:45	14:00	16:05		14:15				14:15		14:00	16:05		14:25		14:15		16:05	
TALARA							17:30						15:40			17:30					14:35		
LIMA		16:05	17:55		18:15	17:15	20:00	16:05	17:55	17:25		16:05	18:10	15:55	17:15	20:00		17:55	16:05	17:55	17:15	19:45	15:59
SAO PAULO										26:30				23:55									23:55
RIO DE JANEIRO										28:20				25:40									25:40
LA PAZ			21:30		21:40				21:30									21:20					
ASUNCION					24:50													24:30					
ANTOFAGASTA			24:10									19:55							19:55				
SANTIAGO		21:35	27:15			22:50		21:35					20:15		22:50						22:50		
BUENOS AIRES		24:45	30:45		29:05	26:00		24:45	27:40			24:00	27:45		26:00			28:45	24:00	27:30	26:00		

Notes: (a) On May 1, 1959 flights 701/700 become dual configuration, Tourist-First Class flights.
(b) On March 26, 1959 flights 733/732 and 719/720 become dual configuration, Tourist-First Class flights.
(c) Time elapsed from departure previous station to departure next station. In all other cases, time elapsed is calculated from departure to arrival.

Source: Official Airline Guide, World-Wide Edition, April 1959.

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ANNEX 33
AMERICAN AVIATION MAGAZINE, DECEMBER 30, 1957

Panagra sells luxury, frequency in South American service

by Anthony Vandyk

EVERY DAY of the year at 4 p.m. Eastern Standard Time a Panagra DC-7B leaves New York International Airport headed south. And almost every day at least one of the passengers on the flight looks up with a start when an announcement is made in Spanish that the aircraft is bound for Panama, Lima, Santiago and Buenos Aires as well as Washington and Miami.

What the surprised passenger does not know is that the National flight 701—New York-Washington-Miami—is part of Pan American's and Panagra's flights 701. This interchange schedule not only provides commuter service between New York and Washington but also between New York and the capitals of the South American west coast republics and Argentina.

Panagra's daily first-class flight to South America represents perhaps the most luxurious commuter service ever offered on a daily basis on such a long route. The airline pulls out every stop to emphasize service. Nothing but the best is the order of the day on "El Inter Americano," the name used for the first-class flights.

For passengers desiring a cheaper class of service, Panagra has a daily DC-6B tourist flight, "El Pacifico," which also operates under interchange arrangements with National and PAA from New York and Miami to Panama, and points south on a daily basis.

Combats cut-rates

The combination of ultra-high luxurious first-class service and fast tourist service, operated with pressurized equipment, together with the advantage of a twice-daily frequency, is enabling Panagra to combat, to some extent, the effects of the cut-price services offered by various Latin American operators (AMERICAN AVIATION, Dec. 16).

Speed is a particular feature of both services. This writer was able to complete a full day's work in Washington and then take the evening El Inter Americano flight to Lima, arriving at 7:35 the next morning in time for a full day in the Peruvian capital.

The travel time between Buenos Aires and New York by the interchange service is 22 hours 40 minutes, as compared with 19 days required by the fastest steamship.

Panagra's service to South America will be considerably faster in 1960, when the airline plans to introduce its four Douglas DC-8s. In practice, however, it may not be possible for the jets to operate at all the major cities currently served on the north-south trunk route.

Despite grandiose paper plans of the countries concerned, the airport situation for jets does not look encouraging at Guayaquil, Lima, La Paz and Santiago de Chile. Unless the present programs are accelerated and more financing is found, Panagra and other carriers will only be able to serve some of these cities with jets by accepting heavy payload penalties.

This situation is particularly aggravating to Panagra, because it has poured millions of dollars into providing the west coast of Latin America with airports and air navigation facilities. Even today the airline still operates all air navigation facilities in Chile, Ecuador and Bolivia. In Bolivia it also operates eight airports.

Last month it was announced that the Argentine government had signed an agreement with Panagra for the installation of a network of very-high-frequency/omni-directional range stations (VOR) in Argentina.



PANAGRA's TRUNK ROUTE today, from Panama to Buenos Aires, is little different from that operated in 1929, a year after the airline's formation. Panagra also operates feeder services in Ecuador, Peru and Bolivia.

Ancient and honorable history

Panagra's investment in South America dates back almost 100 years. W. R. Grace & Co., which owns 50% of Panagra, has been developing trade industry and transportation between the U.S. and the west coast countries of South America since the latter part of the 18th century.

The other 50% of Panagra is owned by Pan American World Airways. When the company was formed in 1928 it was indeed logical to couple W. R. Grace's knowledge of the west coast of South America with the aviation know-how of PAA. The full name of the company—Pan American Grace Airways—reflects the 50-50 ownership.

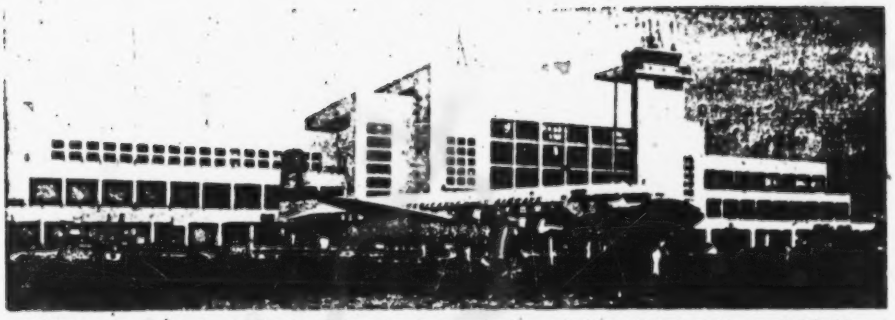
The beginnings of Panagra in 1928 were humble. Grace and PAA agreed to pay $15,000 for a small crop-dusting company established in Peru by Harold R. Harris who later was to become well-known in the airline industry. It was on Sept. 13, 1928, that the new airline, then known as Peruvian Airways Corp., started operations using a four-passenger Fairchild single-engine aircraft. Its first flight was from a race track in Lima to a football field in Talara, Peru.

Shortly afterwards operations were extended north to Guayaquil and in July 1929, Panagra was authorized by the U.S. Post Office Department to inaugurate mail service to Chile. Pan American carried the mail from Miami to Panama and then a Panagra amphibian flew it down the west coast of South America as far as northern Peru, where it was transferred to Fairchild equipment for the remainder of the distance to Santiago.

The most dramatic sector of Panagra's route is that from Santiago across the Andes to Buenos Aires. Today this operation is strictly routine—the airline has made more than 25,000 crossings of this highest mountain range in the western hemisphere—but in 1929 the task of getting across the mountains represented a formidable challenge.

Mail service over the trans-Andean route was started by Panagra in 1929 with a single-engine Fairchild equipped with no radio and provided with no weather reports. The pilot would climb up to 14,000 feet above Santiago, take a look at the pass through the range and, if the weather

[fol. 5362]



A PANAGRA DC-7B operating the first class El Inter Americano service is seen in front of Lima's modern terminal building at Limatambo Airport. Unfortunately Limatambo will be inadequate for the jet age so the useful life of the terminal is limited.

were clear, would continue through to Argentina. Passenger operations over this difficult route started in October 1929 with Ford Trimotor equipment. This connection made it possible to fly from New York to Buenos Aires in a total travel time of 11 days!

Although in the intervening years travel time between New York and Buenos Aires has been cut from 11 days to 22 hours, Panagra's route system has changed very little in the 28-year period. Feeder services were opened in Ecuador, Peru and Bolivia, but the trunk route remained essentially what it is today (see accompanying map).

Panagra's official northbound terminal is Panama and its southbound terminal is Buenos Aires. Thanks to the interchange, operations are extended northward from Panama to Miami and New York. In fact, between 1946 and 1953 Panagra's route mileage decreased by 12%.

Employment totals 1,400

Through the years the airline has remained relatively small in size and many of the key personnel who were with the organization in the pioneering period are still with it. Panagra has only about 1,400 employes, including 104 pilots and 79 cabin attendants (all the stewards and stewardesses are Latin Americans). Its fleet—all Douglas—is also small: five DC-7Bs; five DC-6Bs; two DC-4s; and four DC-3s (powered with R2000s).

The DC-7Bs and DC-6Bs not only fly the Panagra system but are also used on the interchange to the U.S.—PAA and National contribute no aircraft in return. One of the DC-4s is used for an all-cargo service along the trunk route. The DC-3s, overhauled in Lima, are used entirely for feeder operations.

A look at Panagra's traffic statistics would not give the impression that the airline has such a small fleet. In 1956, it carried 143,222 passengers and operated 172,103,000 passenger-miles (more than Western Airlines). Its freight traffic in 1956 involved the performance of 4,029,161 freight ton-miles, making it a bigger freight carrier than Capital Airlines. Load factors in 1956 were 57.36% for the DC-7B fleet, 61.75% for the DC-6B fleet and 65.21% for the DC-4 fleet.

Exceptional food

These load-factors are particularly creditable in view of the very high service frequency Panagra operates. There is no question that Panagra captures and holds its traffic by its superlative in-flight service.

Much of Panagra's reputation for superlative service is due to Mike Clavarino, who supervises the food service.

Based in Lima, Clavarino imports most of the foodstuffs that are used in Panagra's "gourmet galleys" from all parts of North and South America. He has even established a special farm near Lima high up in the mountains where pure mountain water is used for irrigation. The produce from this farm provides the vegetables used in Panagra's main flight kitchen at Limatambo Airport, Lima.

Meals served in flight by Panagra are as sumptuous as can be found on any airline, but Clavarino's organization also realized that at certain times a big meal is not always desired by passengers. For example, flying across the Andes between Santiago and Buenos Aires passengers are more interested in enjoying the spectacular scenery than in eating a large meal. Hence on this 2½-hour flight Panagra sets up in the lounge of its DC-7Bs a special buffet table consisting of rolled cold meats, cheeses, aspic salads, assorted vegetables and fresh fruits.

For children, who often do not appreciate seven-course luxury meals, Panagra has simple items such as fruit cup, hamburgers and pot pies on hand.

Superb service, twice-daily frequency and modern aircraft make Panagra's operation eminently successful. Unfortunately, however, the future of the airline is somewhat clouded by an anti-trust suit filed by the Justice Department in January 1955 to break up the 50-50 joint ownership of the airline.

Until this suit is settled, relations between the co-owners will continue to be uneasy, and Panagra will be unable to consolidate its past successes and follow the normal developmental trend of the air transport industry.



LA PAZ, 13,400 ft. above sea level, is world's highest commercial airport. AMERICAN AVIATION's International Editor Anthony Vandyk and llama stand in front of a Panagra DC-6B operating the El Pacifico tourist service. In background is the airfield's uncompleted terminal building.

[fol. 5364]

ANNEX 34

COMPARISON OF REVENUE PASSENGER MILES PANAGRA AND BRANIFF INTERNATIONAL

1929—1958

Year	(000 Omitted) Panagra	Braniff	Braniff as Percent of Panagra
1929	338	—	—
1930	985	—	—
1931	1,336	—	—
1932	3,073	—	—
1933	4,052	—	—
1934	5,791	—	—
1935	7,017	—	—
1936	8,505	—	—
1937	10,349	—	—
1938	8,400	—	—
1939	9,281	—	—
1940	14,326	—	—
1941	22,796	—	—
1942	40,828	—	—
1943	53,622	—	—
1944	63,109	—	—
1945	73,339	—	—
1946	89,135	—	—
1947	106,511	—	—
1948	103,663	6,912	6.7%
1949	105,404	29,020	27.5
1950	103,783	43,339	41.8
1951	125,747	64,320	51.4
1952	133,186	80,323	60.3
1953	136,038	76,670	56.4
1954	149,099	80,409	53.9
1955	160,681	75,291	46.9
1956	168,650	69,452	41.2
1957	168,641	92,381	54.8
1958	160,145	88,802	55.5

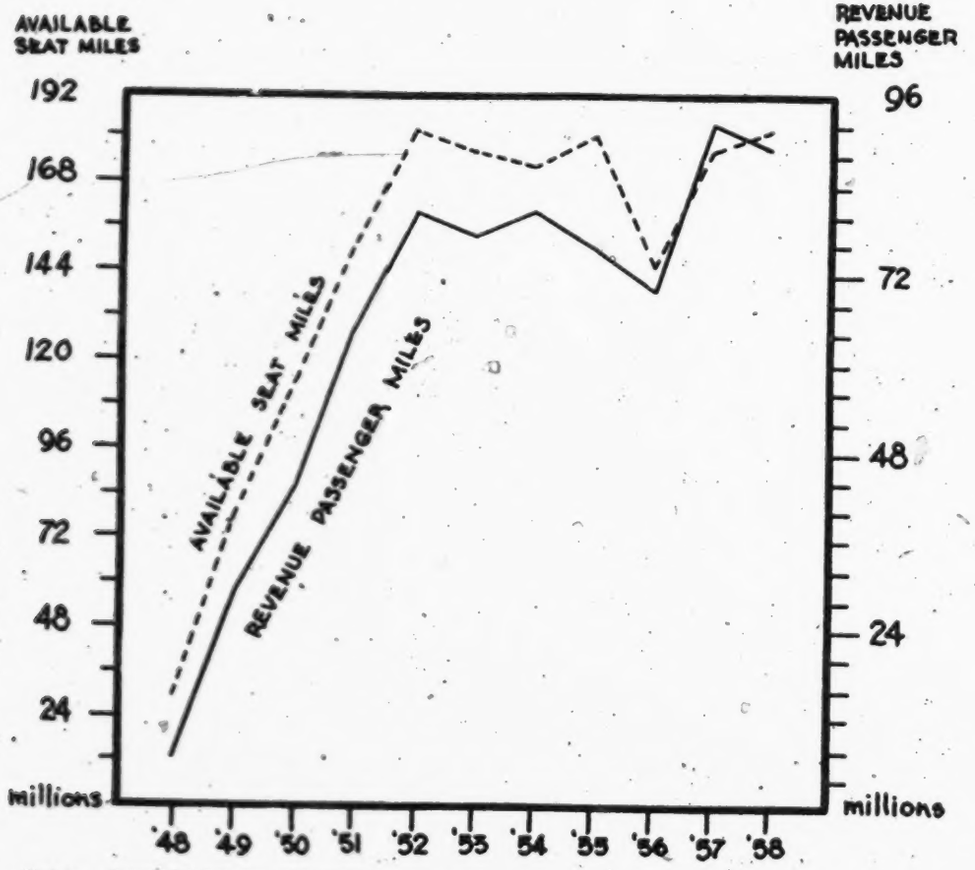
Note: Panagra figures include non-scheduled operations for years 1929 through 1946 since breakdown not available for these years. Figures from 1947 through 1958 reflect scheduled operations only for both carriers. Braniff began international service June 3, 1948.

Source: Panagra—Company Records. Braniff International—Form 41 submitted to the C. A. B. by Braniff.

[fol. 5365]

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ANNEX 35
COMPARISON OF AVAILABLE SEAT MILES
AND REVENUE PASSENGER MILES
BRANIFF INTERNATIONAL

1948 - 1958



Note: Braniff began international operations June 3, 1948.

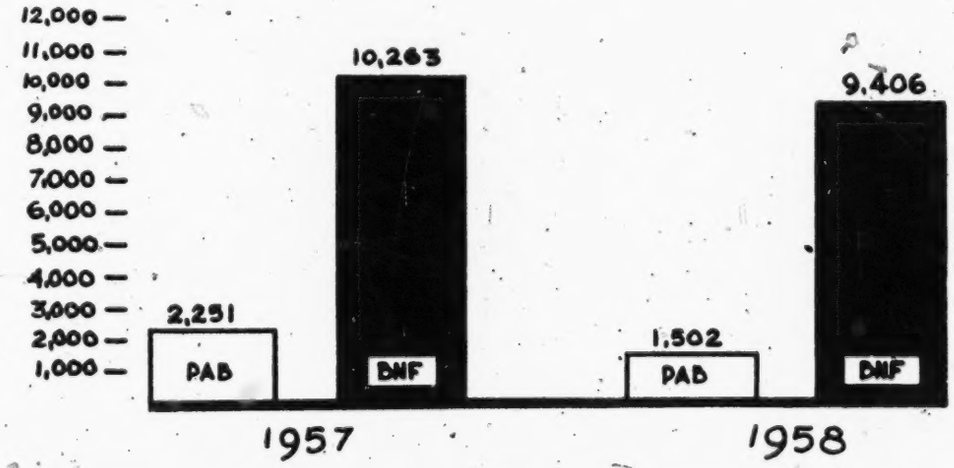
Source: Summary of U. S. International Airline Traffic, Compiled by American Aviation Publications from Official C.A.B. Data.

[fol. 5366]

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ANNEX 36

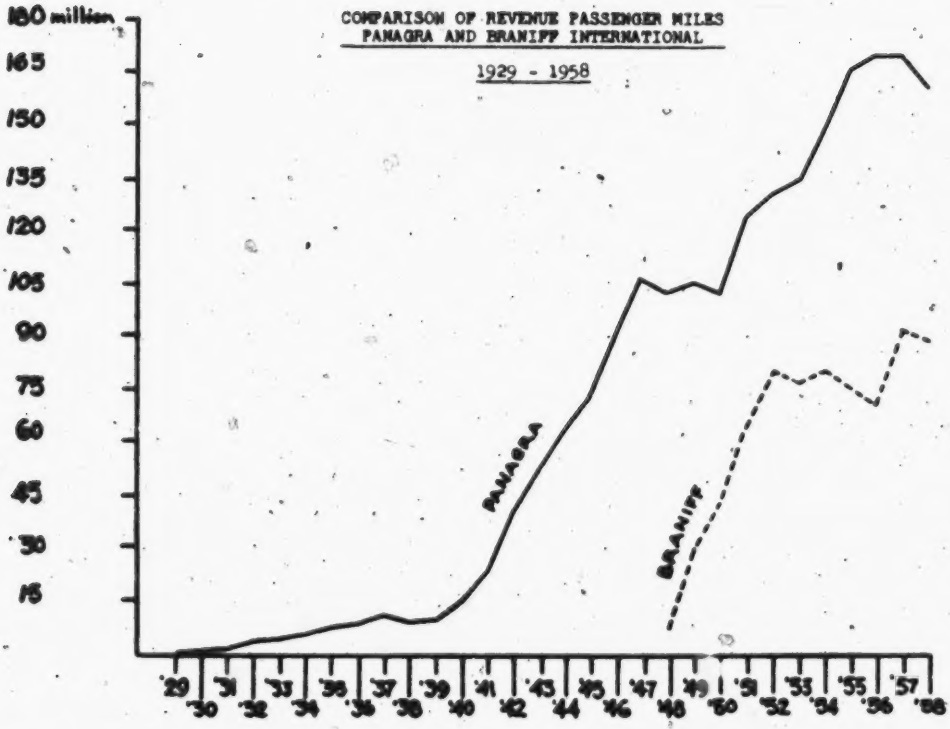
COMPARISON OF TOTAL TRAFFIC BETWEEN
RIO DE JANEIRO/SAO PAULO, BRAZIL AND LIMA, PERU
CARRIED BY BRANIFF AND PANAIR DO BRASIL,
THE ONLY TWO AIRLINES SERVING THIS ROUTE

1957 - 1958



Note: This route connects Rio de Janeiro and Sao Paulo, Brazil, the second and third largest cities on the East Coast of South America, with a combined population of over 4 million, with Lima, Peru, the second largest city on the West Coast of South America with a population of over 500,000.

Source: Figures developed from Braniff and Panair do Brasil manifests on file with, and available for public inspection at, either the Customs Service or the Office of the Director of Civil Aviation, Lima, Peru.



Note: Panagra figures include non-scheduled operations for years 1929 through 1946 since breakdown not available for these years. Figures from 1947 through 1958 reflect scheduled operations only for both carriers. Braniff began international service June 3, 1948.

Source: Panagra - Company Records. Braniff International - Form 41 submitted to the C.A.B. by Braniff.

Colombia	32.4	67.6	29.6	70.4	28.8	71.2	32.0	68.0	32.9	67.1	30.3	69.7
Ecuador	N.A.	N.A.	70.1	29.9	81.1	18.9	84.8	15.2	86.9	13.1	74.5	25.5
Peru	73.0	27.0	78.3	21.7	84.4	15.6	89.8	10.2	98.9	1.1	99.9	0.1
Paraguay	N.A.	N.A.	77.5	22.5	82.7	17.3	98.9	1.1	100.0	-	99.1	0.9
Uruguay	N.A.	N.A.	79.0	21.0	78.7	21.3	86.1	13.9	97.7	2.3	99.4	0.6
Venezuela	58.8	41.2	72.7	27.3	64.3	35.7	59.3	40.7	57.7	42.3	55.5	45.5
Guianas & Falkland Islands (2)	N.A.	N.A.	92.0	8.0	96.2	3.8	99.1	.9	99.7	.3	99.3	.7
Other South America (3)	55.2	44.8										
Total South America	53.2%	46.8%	60.9%	39.1%	59.9%	40.1%	62.8%	37.2%	65.1%	34.9%	63.1%	36.9%

Notes: (1) No foreign flag carrier operates directly between the U. S. and Bolivia. Only Braniff and Panagra offer one-plane through service. Passengers to and from the U. S. and Bolivia can connect with numerous foreign flag carriers at Lima. However, such passengers are reported as travelling between the U. S. and Peru since INS statistics are compiled from airline manifests. Manifests reflect travel between the U. S. and the first point in South America where the passenger deplanes or they reflect travel between the last point in South America at which the passenger enplanes for the U. S. INS statistics do not necessarily reflect true origins or destinations.

(2) For the years 1953 through 1957 travel to and from the U. S. and the Falkland Islands, British Guiana, French Guiana, and Surinam (Netherlands Guiana) totalled as follows: 1953 - 1,980, 1954 - 2,363, 1955 - 2,170, 1956 - 2,521, and 1957 - 3,193.

(3) The 1958 figure for Other South America totalled 32,734 and includes travel to and from the U. S. and the four aforementioned areas plus Bolivia, Chile, Ecuador, Paraguay, and Uruguay. No breakdown of this figure by country or by flag of carrier is available from published INS calendar year statistics and the Department of Justice reported such a breakdown for 1958 was not yet available.

Source: Figures for Argentina, Brazil, Colombia, Venezuela, Total South America, Peru (1958 only) and Other South America (1958 only) developed from published Immigration and Naturalization Service statistics. Figures for Bolivia, Chile, Ecuador, Paraguay, Peru (1953-1957) and Uruguay developed from INS statistics supplied by the Department of Justice. Figures for Guianas and Falkland Islands developed from figures arrived at by subtracting from Total South America the sum of passengers to and from the individual countries.

[fol. 5370]

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ANNEX 37D



THE NEW YORKER

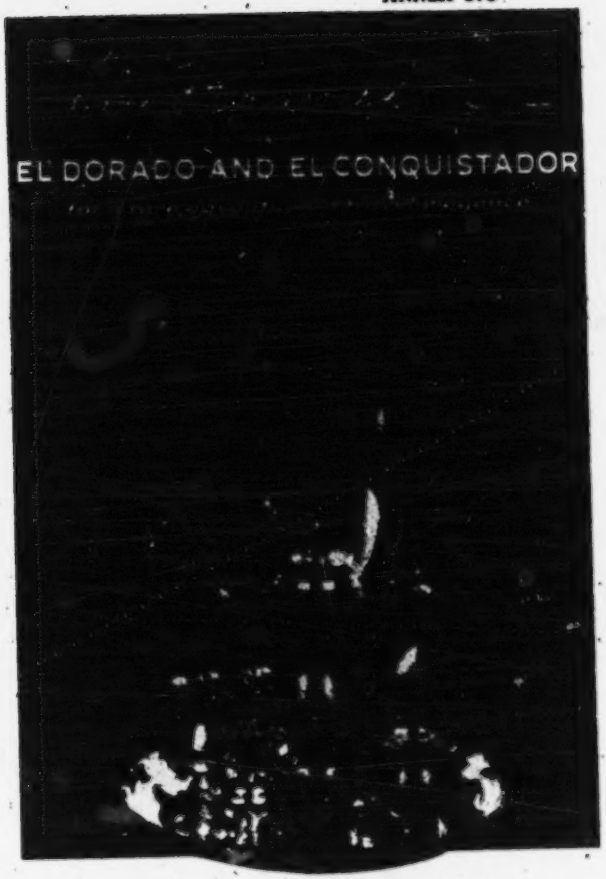
February 28, 1959

TIME

February 9, 1959

[fol. 5369]

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ANNEX 37C



THE NEW YORKER

March 22, 1958
April 12, 1958
May 10, 1958
June 7, 1958

TIME

March 17, 1958
April 21, 1958
May 19, 1958
June 16, 1958

Braniff serves more major cities
in the U. S. A. and SOUTH AMERICA
. . . than any other airline

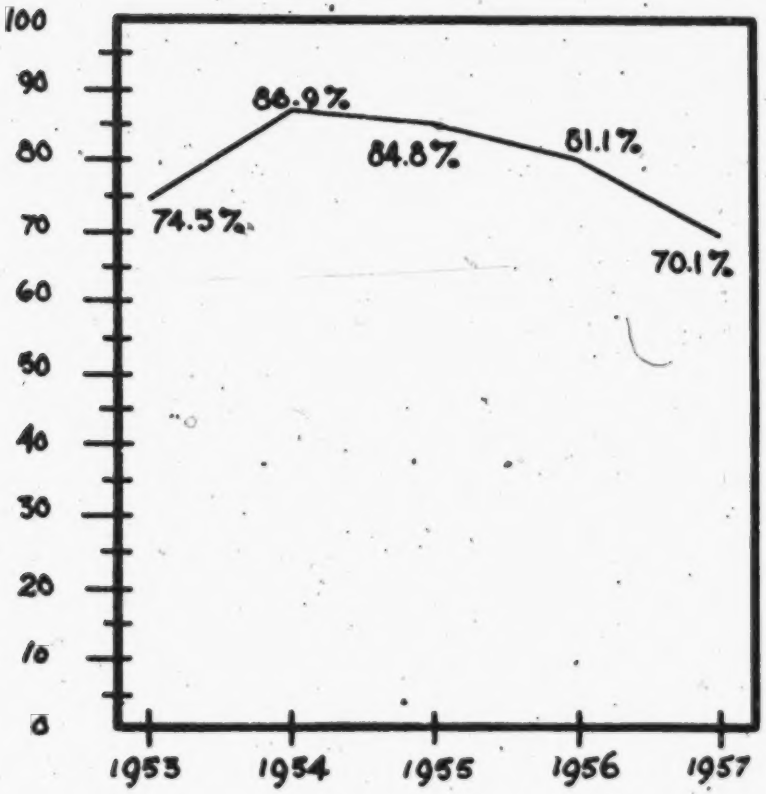


Braniff serves both Idlewild and Newark airports in New York

[fol. 5373]

ANNEX 38C

C. Passenger Traffic by Air Between the United States and Ecuador - U. S. Flag Traffic as Percentage of Total Traffic.



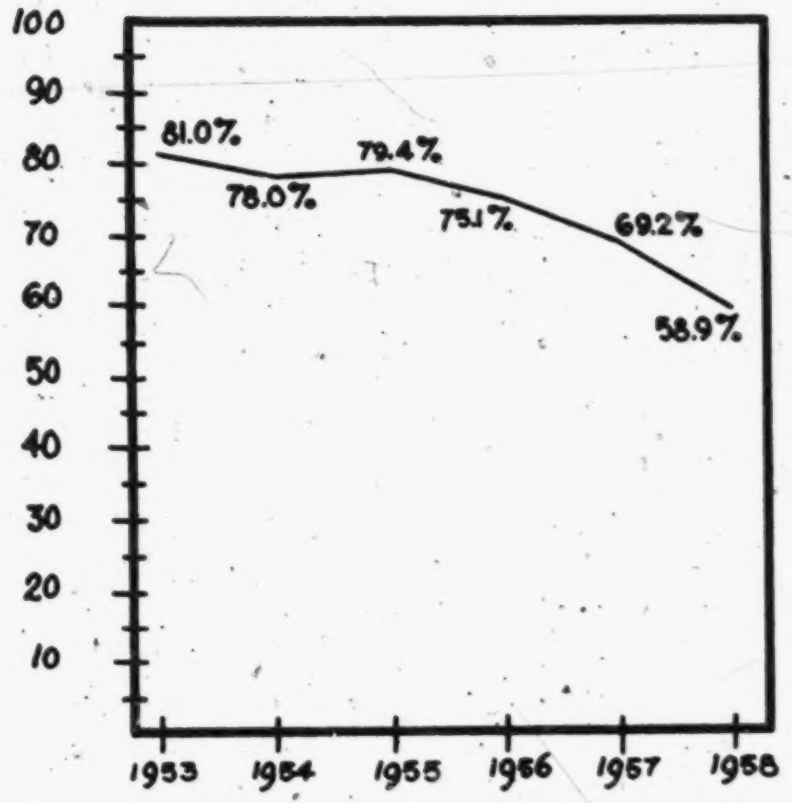
Note: Ecuadorean airline, Aerovias Ecuatorianas (AREA), began operating between Quito and Miami July 1951. It suspended international service in February 1954 and has since operated only domestic service within Ecuador.

Source: Based on Immigration and Naturalization Service statistic supplied by the Antitrust Division. 1958 figures for Ecuador are not available.

[fol. 5374]

ANNEX 38D

D. Passenger Traffic by Air Between the United States and Argentina - U. S. Flag Traffic as Percentage of Total Traffic.



Source: Based on Immigration and Naturalization Service, U. S. Department of Justice, published statistics.

[fol. 5376]

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ANNEX 39

DECLINE IN U. S. FLAG PARTICIPATION IN PASSENGER TRAFFIC BY AIR BETWEEN THE UNITED STATES AND SOUTH AMERICA

1953 - 1958

Passenger Traffic by Air Between the United States and South America
U. S. Flag and Foreign Flag Traffic as Percentage of Total Traffic

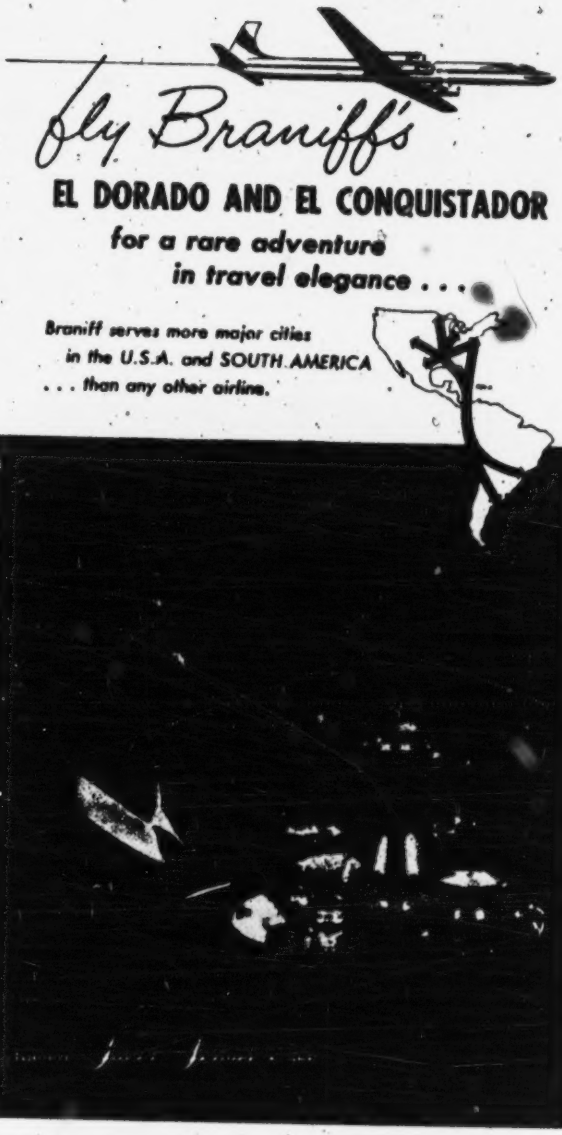
	1958		1957		1956		1955		1954		1953	
Country	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign
Argentina	58.9	41.1%	69.2%	30.8%	75.1%	24.9%	79.4%	20.6%	78.0%	22.0%	81.0%	19.0%
Bolivia (1)	N.A.	N.A.	100.0	-	100.0	-	100.0	-	100.0	-	100.0	-
Brazil	41.6	58.4	48.1	51.9	45.5	54.5	66.1	33.9	80.2	19.8	78.2	21.8
Chile	N.A.	N.A.	36.6	63.4	73.9	26.1	96.6	3.4	98.3	1.7	99.8	0.2
Colombia	32.4	67.6	29.6	70.4	28.8	71.2	32.0	68.0	32.9	67.1	30.3	69.7
Ecuador	N.A.	N.A.	70.1	29.9	81.1	18.9	84.8	15.2	86.9	13.1	74.5	25.5
Peru	73.0	27.0	78.3	21.7	84.4	15.6	89.8	10.2	98.9	1.1	99.9	0.1
Paraguay	N.A.	N.A.	77.5	22.5	82.7	17.3	98.9	1.1	100.0	-	99.1	0.9
Uruguay	N.A.	N.A.	79.0	21.0	78.7	21.3	86.1	13.9	97.7	2.3	99.4	0.6
Venezuela	58.8	41.2	72.7	27.3	64.3	35.7	59.3	40.7	57.7	42.3	55.5	45.5
Guianas & Falkland Islands (2)	N.A.	N.A.	92.0	8.0	96.2	3.8	99.1	.9	99.7	.3	99.3	.7
Other South America (3)	55.2	44.8										
Total South America	53.2%	46.8%	60.9%	39.1%	59.9%	40.1%	62.8%	37.2%	65.1%	34.9%	63.1%	36.9%



Braniff serves more major cities in the U.S.A. and South America ...than any other airline!

BRANIFF *International* **AIRWAYS**

General Offices: Dallas, Texas



THE NEW YORKER

July 12, 1958
August 9, 1958
September 13, 1958
October 11, 1958

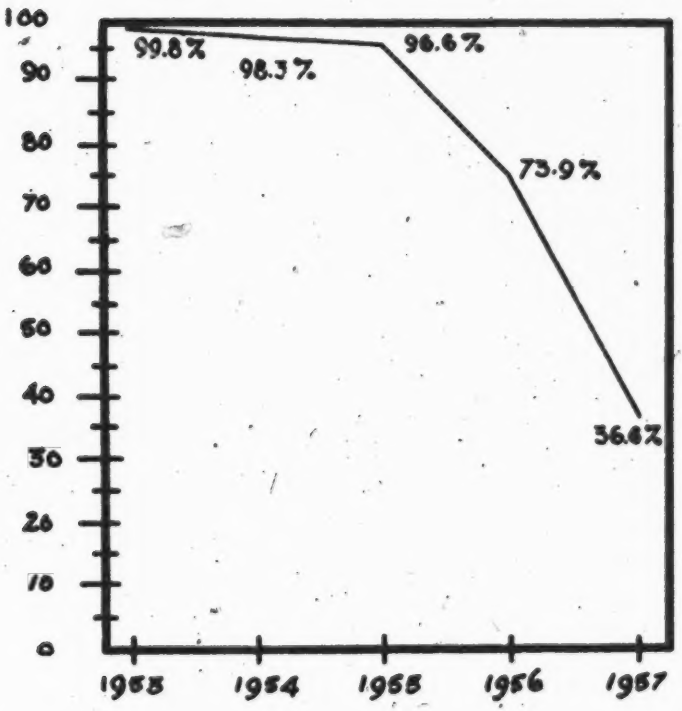
TIME

July 21, 1958
August 18, 1958
September 22, 1958
October 13, 1958
November 17, 1958
December 8, 1958

ANNEX 38A

GRAPHS SHOWING DECLINE IN U. S. FLAG PARTICIPATION IN PASSENGER TRAFFIC BY AIR BETWEEN THE UNITED STATES AND VARIOUS SOUTH AMERICAN COUNTRIES

A. Passenger Traffic by Air Between the United States and Chile - U. S. Flag Traffic as Percentage of Total Traffic.

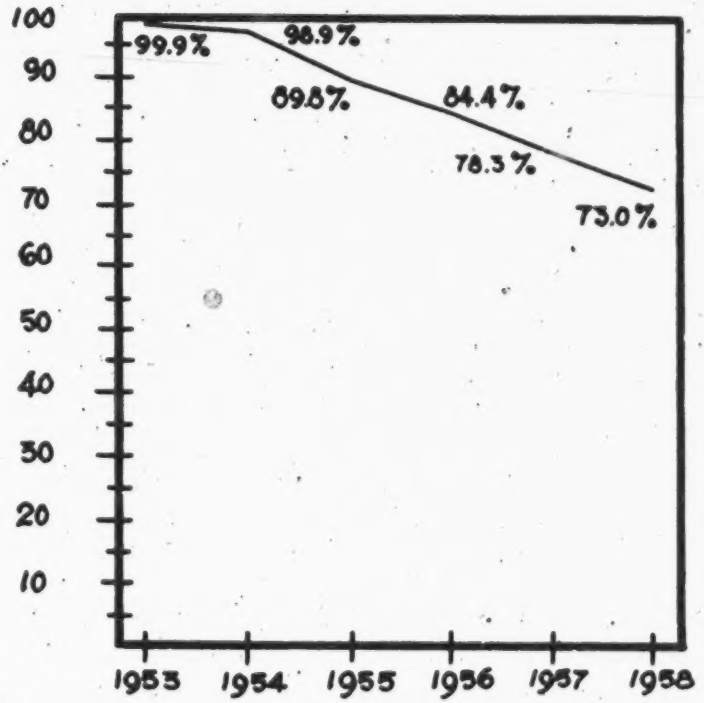


Source: Based on Immigration and Naturalization Service statistics, supplied by the Antitrust Division. 1958 figures for Chile are not available.

[fol. 5372]

ANNEX 38B

B. Passenger Traffic by Air Between the United States and Peru - U. S. Flag Traffic as Percentage of Total Traffic.

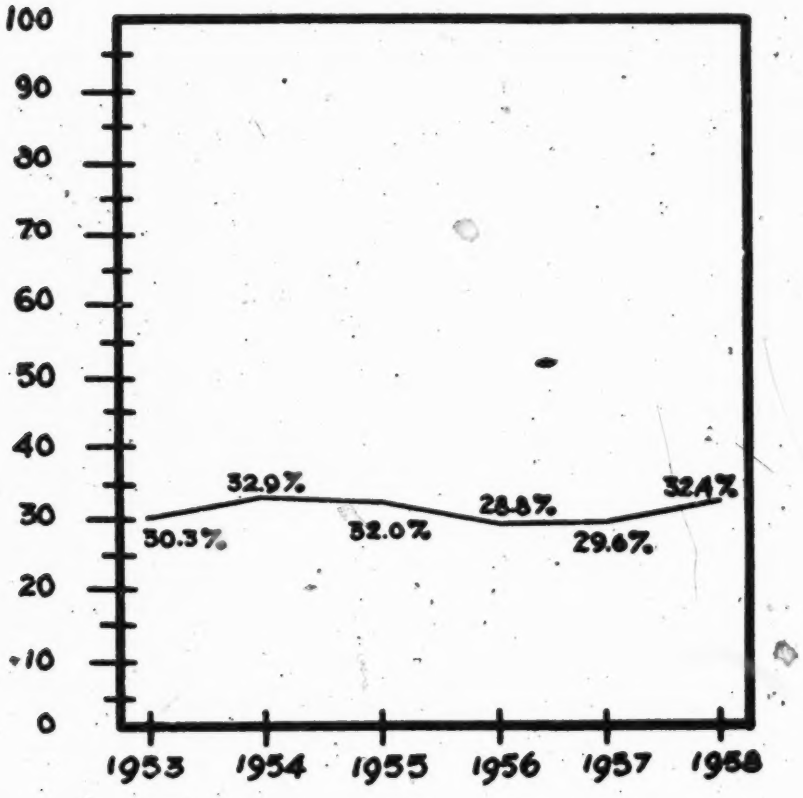


Source: 1950 through 1957 figures based on Immigration and Naturalization Service statistics, supplied by the Antitrust Division. 1958 figures based on published Immigration and Naturalization Service statistics.

[fol. 5375]

ANNEX 38E

E. Passenger Traffic by Air Between the United States and Colombia - U. S. Flag Traffic as Percentage of Total Traffic.



Note: Braniff inaugurated thrice weekly New York/Bogota, Colombia service via Washington, Miami, and Panama effective May 15, 1957.

Source: Based on published statistics of the Immigration and Naturalization Service, U. S. Department of Justice.

tries such as Brazil spawned one airline after another. Towering mountains and swamp jungles made railroad construction a gigantic task. But given a small clearing and even a secondhand plane, airlines could get around the countries.

Both Pan Am and Panagra saw a huge, untapped market. Pan Am, for one, established inter-country routes, then helped set up feeder lines such as Costa Rica's LACSA.

After the war, Latin countries raced to get into the international airline business. They felt more closely oriented to the U.S. than to Western Europe—for the first time in their history. Sensitive about national pride, they wanted the prestige of flag-carrying airlines, just like European and other countries. Beyond that, as U.S. domestic airlines modernized, a raft of cheap DC-3s and DC-4s—just right for small landing strips and hardy use—glutted the secondhand plane market.

• **Tit for Tat**—Then came the jostling for air rights, into the U.S. and between Latin countries. Under bilateral agreements, the U.S. and Latin countries would grant reciprocal rights for each others' carriers. But Latin countries did not always act that politely toward each other. For instance, Aerovias Panama (APA) recently was struggling for a foothold on the highly competitive Panama-Miami run. Panama refused passenger pickup rights to Ecuador's Compania Ecuatoriana de Aviacion (CEA). Ecuador retaliated by refusing rights for APA into Guayaquil.

• **Bonanza for Miami**—Meantime, Miami International Airport has become the second busiest airport here, with some 30 U.S., Latin, and European lines flying to and from the islands and the continent to the south. Today, this gateway handles nearly 1-million foreign passengers, mostly Latin Americans, or twice the figure of a decade ago. Air-cargo traffic also is soaring. Pan Am handled 43.3-million lb. during the first half of 1958—8% above the same period last year.

Miami also has turned into a nuts-and-bolts servicing depot for a horde of airlines. Four companies—Aerodex, American Airmotive, ACES, and L. B. Smith—did a reported $35-million business last year overhauling Latin fleets.

IV. Skies Full of Trouble

Clearly, as even the most optimistic airline executives admit, the battle of the Latin airways can't go on forever.

The Latin lines have had some obvious advantages. As REAL's Miami manager points out, the pay scales for flight and ground crews in Brazil "are a lot lower than in the U.S., though they have the same qualifications." They also can appeal directly to the Latin American's national pride and, in many cases, small pocketbook. Probably the lower fares have been a good thing—opening travel to Latinos who knew little about their neighbors to the U.S., forcing U.S. lines to dress up their somewhat stodgy service.

But the plethora of new airlines faces all sorts of troubles. While some, such as TACA—owned by New Orleans' Waterman Steamship Lines—provide daily Viscount service around Central America, others have barely enough equipment to maintain international schedules. Quite a few lack modern radar equipment, and also have frequent, little-publicized crashes. All too many live off sizable, long-term handouts from governments—Chile, for example, is backing LAN airline to put it in the race. And a handful are simply heading straight for bankruptcy.

• **Small Potatoes**—Beyond that, Latin America, though generating far more traffic than it did five years ago, is still small potatoes, compared to Western Europe. U.S. tourists spent only $36-million in South America last year, against $609-million in Europe.

Then, with riots and revolutions still plaguing Latin America, many carriers get more headaches from Latin politics than from Latin airline competition. The wave of troubles earlier this year—Perez Jimenez' overthrow in Venezuela, Rebel Leader Fidel Castro's planned general strike in Cuba, and the stone-throwing at Vice-Pres. Nixon—cut sharply into airline revenues.

In addition, it will take more business connections and skill than many Latin lines can muster to finance their way into the jet age. Brazilian lines, for one, have $55-million worth of jets ordered. Even with financial help from the plane makers and Export-Import Bank loans, this outlay will help squeeze Brazil's already tight dollar shortage.

To top it off, there's no place to land jets in Brazil except at the new jungle capital, Brasilia—and other countries have this same problem.

• **Merger Is Out**—One answer to all this competition is a broad merger of non-IATA carriers into one company or conference. Though much discussed, this solution seems far off. Another idea, which makes good sense, is greater teamwork between two or three lines. Nicaragua's Lanica, reportedly controlled by Dictator Somoza, is working closely with TACA. In Mexico, Compania Mexicana de Aviacion, S.A. (partly owned by Pan Am) and Aeronaves de Mexico, S.A. (owned by ex-Pres. Aleman) seem to be edging toward an informal merger deal.

As for Pan Am, which expects no letup in competition, one official says: "We've just got to develop more business from customers wanting to fly with a more efficient outfit." end

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ANNEX 40B

AIR TRANSPORT

Latin Rate War Nears Showdown Stage

Predicted settlement of fare cutting dispute not expected to trim foreign-carrier competition.

By L. L. Doty

Miami—Stormy rate-cut war that has embroiled some 60 airlines throughout Latin America and the Caribbean for the past five years finally appears headed for a showdown.

However, any settlement of the conflict, which reached its peak with the under-cutting of established fares by as much as 40% by some South American carriers, is not expected to stem the torrent of competition that has built up against the U.S. airlines. Despite the apparent harmony reached on the rate and fare issue, hidden protective barriers—created by the strong surge of nationalism that has swept the Latin American continent since World War II—will continue to stifle attempts by U.S. carriers to meet that competition squarely.

Most observers here close to the Latin American picture feel the fare war will be resolved only because the undercutters are now threatened with the possibility of being undercut themselves. Recently, U.S. airlines and other member carriers of the International Air Transport Assn. won the right to charge fares 10% less than the low rates offered by non-members of IATA.

Latest Developments

Here are the latest developments in the airline situation in South America:

• **Meeting of governments** in Rio de Janeiro in January (AW Jan. 19, p. 30) created an air of optimism that an equitable fare pattern could be reached that would bring a halt to cut-throat competition. Participating countries agreed in principal that IATA fare levels would be set as standards in South American rate structures. Meanwhile, present fares have been frozen temporarily to stave off an all-out war until all airlines concur on IATA standards.

• **Meeting of airlines operating in South America**, scheduled to begin today at Lima for the purpose of setting rates, has been postponed temporarily. U.S. is waiting for assurance that rate of currency exchange and agent commission issues will be resolved before any meeting on fares is convened. Observers say the postponement does not indicate a delaying action on the part of South American carriers, but that is simply the result of time-consuming efforts to coordinate all countries on all the issues involved.

• South American carriers are still determined to impose stiff restrictions on Fifth Freedom traffic. These airlines are insisting that 75% of all traffic traveling between two South American countries should be diverted to the flag carriers of those countries.

Small balance of 25% to be flown on U.S. carriers will have a depressing effect on gross revenues of those airlines, according to officials of companies here.

Principal problem lies in the large number of airlines which now saturate the Latin American and Caribbean markets. And, of the 62 carriers competing for business up there, 47 operate to the U.S. as compared with 14 scheduled airlines that serve the U.S. through the transatlantic route.

Among the scheduled carriers competing for business throughout the area are eight major European airlines, with KLM, for example, serving as many as 28 cities in Latin America and the Caribbean. Japan Air Lines this year plans to begin scheduled service on its South American route to add to the runaway battle for traffic (AW Dec. 29, p. 30).

Latin American Story

Cut-rate war among South American carriers has focused attention on the problems U.S. airlines are facing in the development of Latin American air travel markets. Following a survey of carriers serving Latin America, Aviation Week has prepared a series of two articles analyzing the major issues creating these problems. The accompanying article covers the fare issue as it now stands. A second article next week will deal with specific traffic problems as they are related to rates and to the bilateral pacts between the U.S. and Latin American countries.

Majority of the South American carriers are IATA members, as are all U.S. flag carriers offering scheduled passenger service south of the U.S. border—American, Braniff, Delta, Eastern, National, Panagra, Pan American and Western. However, in the foreign flag carrier group there are 13 non-members of IATA which refuse to abide by IATA fare standards and offer bargain rates far below fares charged by their competitors.

Round Trip Rates

For example, CINTA, a Chilean airline and non-member of IATA, quotes a fare of $515 round trip between New York and Santiago as compared with the $771.60 tourist and $983.10 first class rate published by Panagra. Aerolineas Peruanas offers a $451.90 round trip Miami-Buenos Aires fare as compared with Pan American's tourist fare of $778 round trip between the two points.

Attempts to force such carriers to hike their rates to more reasonable levels have failed in the past. Generally, these operators have been able to survive lower revenues because of low costs.

They have purchased second-hand aircraft with low writeoff charge and kept wage-scales at minimum levels. They hold down overhead costs through such devices as renting ground equipment from airport operators or other carriers for the short periods of time it is actually needed and used. Also, the cut-rate lines generally confine service to the plush, profitable routes leaving the less productive areas to IATA members.

AVIATION WEEK - MARCH 9, 1959

U.S. Flag Lines Feel Competitive Pinch

By Glenn Garrison

New York—Increased foreign competition, slowed traffic growth, and labor troubles helped make 1958 a problem year for most U.S. flag carriers as they struggled to handle the transitional problems and financial load of expensive jet fleets now rolling off production lines.

Pan American World Airways kicked off the U.S. jet age last fall with transatlantic Boeing 707-120 schedules, but heavy impact of jets on the international market won't be felt until they are delivered in quantity sometime next year. Meanwhile, U.S. operators faced a snarl of international controversy over jet surcharges and bilateral agreements as they prepared for full-scale jet services.

Foreign-flag carriers with expanded piston and turboprop fleets made the most of the interim last year and cut into the U.S. share of the total traffic. The U.S. carriers registered slight gains for the most part in 1958 but in some cases suffered decreased traffic totals. For various economic and political reasons, services to some geographical areas were particularly hard hit and everywhere business was still booming, as on the North Atlantic, the U.S. share was smaller.

Pan American, biggest U.S. flag operator, gained only 9,720 passengers last year on its world-wide services—an increase of 0.3% to 2,892,894. Its Atlantic operation was responsible for this small gain, since Pan American's Latin Division and Pacific Alaska Division traffic were well under 1957 totals.

Latin Price War

Trans World Airlines, hit by a mechanics' strike last fall, carried 273,870 scheduled passengers on its international routes, a gain of 9% over the previous year. TWA, however, carried 44,933 charter passengers, mostly under Military Air Transport Service Contract, during 1958, for a total scheduled and charter increase of 13.7%. Panagra's traffic between the U.S. and South America dropped from 139,409 passengers to 128,776. The airline went to the Civil Aeronautics Board last fall with a request for subsidy, blaming its losses on cut-rate foreign competition and expressing the fear of an all-out price war in the South American air market.

Delta Air Lines' international traffic fell from 70,062 to 57,829 passengers. President C. E. Woolman listed the economic recession and political unrest in the Caribbean as factors in the 1958 results. United Air Lines carried 100,160 passengers in its territorial operation to Hawaii, a drop of 1.8%.

American Airlines carried 127,000 passengers between the U.S. and Mexico, down from 138,000 in 1957. American last January began flying daily non-stops between Chicago and Mexico under new authority resulting from the Mexican-U.S. agreements of 1957. Nonstop character of the flights resulted in an increase in passenger miles for the year from 100,303,000 to 115,302,000. A pilots' strike and increased foreign and U.S. competition to Mexico were factors in the passenger drop.

Other Gains

Braniff Airways' South American operations showed a 6.2% gain in 1958 for a total of 46,548 passengers. National Airlines carried 51,433 passengers on its routes to Cuba from Miami, New York and Tampa, up from 40,168 in 1957.

Total travel market between the U.S. and foreign countries increased last year, but at a slowing pace. Air passengers totaled 3,402,333 during the year ended June 30, 1958, an increase of 11% compared to a 15% increase during the previous year (most Canadian traffic is excluded from these figures). U.S. scheduled and non-scheduled flag lines' share of the total was 60% during the year ended June 30, 1958. This was a drop of 2%.

Foreign flag carriers increased their total of passengers into the U.S. by 13% and of passengers departing the U.S. by 23%. Respective U.S. air carrier increases were 5% and 10%.

Airlines fared extremely well, however, compared to sea carriers during the year ended June 30, 1958. Arrivals in the U.S. from foreign countries by sea dropped 7% to 634,644 passengers. Departures increased by only about 5,000 passengers for a total of 584,906. Air traffic led sea traffic for the period by 2,182,783 passengers.

Pan American's appearance last year as the first U.S. jet operator on the international scene emphasized a number of political, economic and operational problems the U.S. flag carriers face. In one of the hitter battles over traffic right agreements between this country and others, inauguration of Pan Am's jet service to Paris was threatened by France's denunciation of its bilateral pact with the U.S. It appeared uncertain almost up until the Oct. 26 inaugural date whether France would let the Pan American jet come into Paris. France's requests for a polar route and broader service rights in the U.S. are still under negotiation. They are typical of the controversial problems which exist in this area as foreign carriers seek to expand their U.S. markets and U.S. carriers battle against the inroads of foreign competition.

Another battle with Pan American in the thick of the fray broke into the open last fall when International Air Transport Assn. members deadlocked on the question of jet fares. At their traffic conference in Cannes, the airlines failed to agree on this hotly-fought issue of whether a surcharge shall be applied to all turbojet fares. Pan American, backed by British Overseas Airways Corp. among others, resisted imposition of a surcharge and the conference ended without a solution. It reconvened last month and was striving hard for a compromise agreement by March 31, date the current fares expire. Unless the IATA members agree, an open-rate crisis could develop on the North Atlantic this year.

Noise Problem

From the operational standpoint, the first big hurdle Pan American had to clear with its jets was the noise barrier thrown up at Idlewild by the Port of New York Authority. An 11th-hour approval by the Port Authority allowed the airline to bring in the 707-120 under rigid operating restrictions which were gradually reduced by the start of service. The remaining anti-noise restrictions severely handicapped the jet in its first scheduled operations by limiting runway use and hence takeoff weight, resulting in a service that was rarely nonstop. BOAC's smaller de Havilland Comet 4 jet transport was also cleared for Idlewild operation and New York-London service began Oct. 4. The Comet service was not hampered by the restrictions. The situation has been improved for the Boeing by runway extensions at the airport.

For similar anti-noise reasons, Pan American had to shift its Paris jet operation from Orly to Le Bourget. Another problem arose at Rome, where the airline's initial Paris-Rome continuing flights were made with piston aircraft instead of jets because the Italian government found difficulties in the proposed jet operation at Rome's airport. Italy was accused at the time of taking its stand because of the surcharge issue, in which Alitalia is a leading proponent of a higher jet fare. The ban was lifted, however, and Pan American is now flying its jets to Rome.

The airline's contract with its pilots

AMERICAN AVIATION, WASHINGTON, D. C.
DECEMBER 15, 1957

South American airlines' cut-rating hits U.S. carriers

by Anthony Vandyk

SANTIAGO, CHILE—The extraordinary situation under which cut-price non-IATA carriers are winning traffic from the established IATA carriers may have dire consequences for the U.S. taxpayer.

If the present trend continues, Panagra's traffic may drop to such an extent it will be forced to appeal to the CAB to go back on subsidy. Braniff International Airways, too, may have to have its subsidy increased as a result of the fierce competition from these small carriers.

Both the U.S. State Department and CAB seem to be unaware of the large amount of traffic non-IATA airlines are taking away from U.S. flag carriers between the U.S. and the west coast of South America.

After an on-the-spot investigation of the situation in Peru and Chile, this writer fully confirmed the state of affairs reported in AMERICAN AVIATION Aug. 12, and which at the time was labeled "fantastic."

Competition from these cut-price carriers is increasing continuously. At present they operate eight flights weekly from Santiago to Miami, New York or Havana. From Lima there are eight flights weekly to Miami.

How big a saving do these "discount houses of the air" offer to travelers? Plenty. For example, the latest attractive fare to be offered is a $446.30 rate for a trip around South America. For this sum the passenger can travel from Miami to Santiago, across the Andes to Buenos Aires and then back to Miami via the west coast of South America.

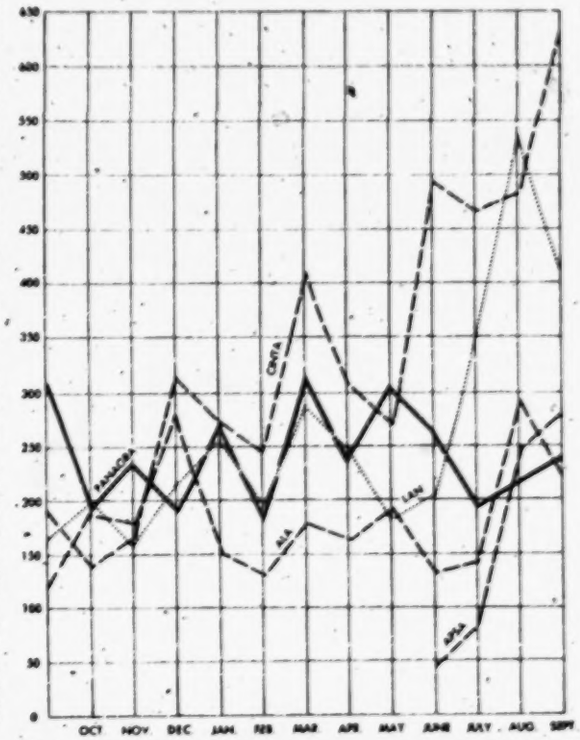
The $446.30 fare compares with IATA Miami-Buenos Aires one-way first class fare of $510 and the round-trip fare of $779 in tourist class. In fact for $446.30 you can't even get a roundtrip ticket from Miami to Lima tourist class on an IATA carrier (that fare is $473.40).

Other fares offered by the non-IATA carriers offer equal savings. For example AIA, the Chilean airline, advertises a New York-Santiago one-way fare of $269.50 which compares with the IATA first class fare of $542 and the tourist fare of $412.

Another Chilean airline, CINTA, has a $230 Miami-Santiago fare which contrasts with the IATA tourist fare of $368. This carrier also has a family fare plan, offering further savings. Between Lima and Guayaquil APA has a $75 30-day excursion fare which is exactly the same as the one-way IATA tourist fare, the IATA roundtrip tourist fare is $135. Under-the-counter discounts often reduce the discounters' fares even more.

Who are these cut-price carriers? There are six now operating on the west coast of South America. Three of

How South American airline traffic has been increasing



INCREASING TRAFFIC being carried by cut-rate carriers on west coast of South America is shown in this chart which covers all northbound passenger movements from Santiago, Chile, between Sept 1956 and Oct. 1957. Panagra and LAN, Chile's government-owned airline, are the only two IATA carriers.



ALA'S OVERHAUL BASE at Santiago, Chile, is modest. Newly delivered DC-4 looks like a DC-6 because of paint job which disguises shape of windows. CINTA uses similar scheme on its "Super DC-4B's" which are painted in colors similar to those used by Panagra.

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ANNEX 40C

AMERICAN AVIATION - JANUARY 28, 1959

Fare-Cutting Practices of Latin American Airlines May Be Ended

Some hope of relief from the bitter and sharp fare-cutting practice of many Central and South American airlines was seen by U.S. carriers following a meeting of the Latins in Montevideo last month.

Called together for the first "working meeting" since the group organized the Asociacion Latino-Americana de Transportadores (ALTA) in April of last year, the group expressed an awareness that only by technical and financial arrangements between each other can they prevent a situation that in the long run will prove ruinous to the whole airline business in Latin America.

Two resolutions of primary importance were adopted at the meeting. The first was mainly in support of a meeting of Latin American civil aeronautics authorities representing the various governments. It would be held in Rio de Janeiro sometime this month and would be aimed at coordinating air legislation between the countries. The ALTA resolution supported the need for meetings of this type at regular intervals so that problems might be tackled in their early stages and it also endorsed proper rate structures covering the various types of services in the area.

The second resolution gave each member of ALTA the freedom to become a member of IATA and at the same time expressed hope that concerted action between the two associations might be reached at a future date.

The Montevideo meeting was presided over by Dr. Emilio Rodriguez Larrain of Aerolineas Perunas. One of the principal speakers was Sr. Rubem Berta, executive head of Brazil's Varig and also a member of the IATA executive committee. Sr. Berta described the general operating conditions of IATA and the advantages it offers members and, in turn, their responsibilities.

Berta said that he sympathized with the problems facing the carriers and declared that he is prepared to propose to the IATA executive committee that those carriers aspiring to membership in IATA be permitted a period of grace in which they would be allowed to operate at their present lower rates while establishing themselves in a position to live up to IATA obligations.

Also addressing the meeting was Sr. Rene Pairoa, executive head of Cinta-Ala of Chile, which operates low price services between Chile and the U.S.

[fol. 5382]

He stated that most of the small Latin airlines hoped someday to join IATA and that the formation of ALTA was a step in that direction.

"We have created an economical type of service to suit the needs of travelers in Latin America," he said. "We operate in good faith and have established a place for ourselves in the travel market which we intend to defend. It is not *fair* to say that we have deviated traffic from the big carriers. Maybe there is some deviation of traffic to us because of our lower rates, but the bulk of our customers are people who could not otherwise have traveled by air."

Pairos stated that he was convinced that establishing ALTA was a good thing and that "in time some harmonious relationship can be established between ALTA and IATA—and, in fact, it might eventually be possible for all of us to join IATA because we recognize the need for standardization of rates for different qualities of service, and the organization of resources for the benefit of the traveling public and the airlines themselves."

These expressions of interest in some possibility of meeting IATA regulations and operating conditions at a future date made U.S. flag carriers wonder. That they have a right to wonder is unquestioned, for unhampered by IATA regulations, paying lower wage scales, flying less expensive equipment, often strongly subsidized by their governments, and frequently concentrating on only the richer routes, the carriers from south of the border have been a persistent thorn in the financial sides of U.S. airlines.

These Latin carriers have far lower labor costs due to the cost-of-living. Their monthly pay for a top captain ranges from about $300 a month in Brazil to $1,100 a month in Cuba. This compares with $2,000 a month for top captains of Pan American flying the routes. Further examples are Pan Am's pay for top copilots of about $1,250 a month compared to a range of $250 to $575 for the Latins. And Pan Am stewardesses make around $418 per month whereas $250 is the very top for the competition.

A recent study shows that in the past half-decade airlines flying into Miami from Central and South American countries climbed from 11 to 23 and that the number of flights doubled, reaching 178 from 89. The impact is being presented by Miami civic organizations for the drawing-off of passengers from U.S. carriers is slicing airline revenues. This means one thing: labor layoffs, which is easily understood in all countries despite language barriers.

NEW YORK TIMES . JANUARY 28, 1959

LATINS FOR AIR CURBS

Would Limit Foreign Lines on Passenger Traffic

Special to The New York Times.

RIO DE JANEIRO, Jan. 27—South American nations moved today to restrict United States and European airlines in carrying passengers between South American points. All seven South American delegations to the regional civil aviation conference voted to recommend limiting extra-continental airlines to 25 per cent of the regional passenger traffic and dividing the remaining 75 per cent among South American airlines.

The United States delegation refused to discuss multilateral agreements on passenger traffic and abstained from the voting.

All delegates approved a recommendation to allow so-called underdeveloped airlines to charge 10 per cent less than regular rates.

South American West Coast Cut-Price Operators

Airline	TAN	APSA	CEA	APA	ALA	CINTA
Country	Honduras	Peru	Ecuador	Panama	Chile	Chile
Aircraft	C-46	C-46	C-46	C-46	L-49	DC-4
No. of seats	36	36	36	40	54	55
No. of flight attendants	2	2	2	3	3	2
Free hot food	yes	yes	yes	yes	yes	yes
Free cocktails	no	no	no	*	yes	yes
Free wine	no	no	no	yes	yes	yes
Free champagne	no	no	no	yes	yes	yes
Free liqueurs	no	no	no	yes	yes	yes
Baggage allowance	66 lbs.	66 lbs.	66 lbs.	66 lbs.	66 lbs.	55 lbs.
Flight crew nationality	U.S.	U.S.	*	U.S.	Chilean	Chilean
On-time performance	very good	fair	*	fair	fair	good
Publicity	excellent	fair	*	good	good	excellent

* No data available.

them operate in close cooperation—TAN (registered in Honduras), Compania Equatoriana de Aviacion (registered in Ecuador) and Aerolineas Peruanas S.A. (registered in Peru).

Observers close to the scene believe that TAN is the guiding force and that this carrier makes available aircraft and pilots to the other two. C. N. Shelton, a vice president of TAN, is said to be responsible for much of the success of the operations of the three carriers. CEA and APSA use TAN's facilities and reservations system in the U.S. The three carriers operate C-46 equipment exclusively.

The cut-price airline operating the most modern equipment from the west coast of South America north is ALA, a well-heeled company which actually is a division of Compania Salitrera de Tarapaca y Antofagasta, a huge nitrate company. This carrier now owns the L-49 Constellation which it previously leased from Cubana to fly up the west coast from Santiago to Havana. While this aircraft was being overhauled, Cubana leased a Super-G Constellation to ALA. APA also uses C-46s to fly to Panama which connect with APA flights to Miami. It recently took delivery of some DC-4 equipment.

Perhaps the best-known of the cut-price carriers is CINTA, which has the financial backing of Compania Sud Americana de Vapores Chilin, a major steamship company. This carrier uses DC-4 equipment painted in the same colors as the aircraft of Panagra. It names its flights to the U.S. Latin Americano which is very much like the name long used by Panagra for its first class service—Inter Americano.

The sixth cut-price carrier is Aerovias Panama Airways (APA) which operates twice weekly between Miami and Lima. Its schedules are also coordinated with those of Rutas Aereas S&M, a Colombian affiliate of KLM, to provide service at cut rates to Medellin and Bogota. APA operates C-46s on its flights down the west coast.

The $446.30 round-South American fare offered by TAN, CEA and APSA involve the use of the Brazilian cut-price airline REAL from Buenos Aires to Miami. This carrier has operated DC-4s for many years at lower-than-IATA fares. Currently it flies four times weekly between Argentina, Brazil and the U.S. (three flights terminate in Miami while the fourth continues to Chicago).

Soon, however, REAL will introduce Super-H Constellations on this service and at the same time will increase its fares to IATA tourist levels.

How can U.S. carriers protect themselves against the increasing traffic from non-IATA airlines on the west coast of South America? Undoubtedly, if they so desire, they could beat the cut-price airlines at their own game. This might involve using DC-4s or DC-6s operating a frequent service at prices competitive to those charged by the non-IATA group. But this, the U.S. carriers feel, might divert traffic from the present services.

Another method would be for protests to be made to State Department and CAB. This, however, might invite retaliatory action.

The problem is worrying two U.S. carriers. The cut-price carriers are actually developing a market of traffic for there is no question that many of the travelers who use their services would not fly at all if they had to use IATA carriers at their present fares. They just could not afford it.

To the carriers who have opened up South America to commercial aviation, built airports, installed navigational facilities and educated the local people to regard the aircraft as a transport vehicle rather than an object of fear, the situation is frustrating. But every day it continues and more passengers flock from the U.S. carriers to the cut-price airlines.

Chances are that, in the end, it will be the U.S. taxpayer who pays.

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ANNEX 40F

WALL STREET JOURNAL

JANUARY 29, 1958

Latin Airlines

They Swarm Into U.S.; Lower Fares Win Trade From Yankee Rivals

They Cut Costs With Cheaper Planes, Labor; Some Draw Big Government Subsidies

Flying the Barefoot Trade

By Cal Brumley
Staff Reporter of The Wall Street Journal

MIAMI—"We taught the Latins to fly and now they are taking our business," grumbles an executive of the Latin American division of Pan American World Airways here.

When the roar of a Convair Super 340 passing overhead recedes, the executive adds: "And don't let anyone kid you. This Latin airline competition is serious. In our Latin division, where only nine international airlines competed for traffic in 1946, there are more than 30 flying today."

The hard-pressed U.S. airline industry, already buffeted by rising costs and shrinking profits, is worriedly watching a flourishing number of Latin-owned air carriers slice off bigger and bigger hunks of the U.S.-Latin America traffic. Nearly 1.5 million travelers annually fly between the U.S. and the score of American republics that lie to the south, some 50% more than the number that fly between the U.S. and Europe each year.

And the Latins' inroads appear to be just beginning. Additional Latin airlines are planning to compete with U.S. carriers on U.S.-Latin America routes. And some of the Latin lines are laying plans for extending their operations to compete with U.S. carriers on Atlantic and Pacific routes.

Latin Lure

The chief Latin lure: Lower fares, made possible by cheaper equipment, low cost labor and, in some cases, heavy government subsidies. For example:

The one-way fare from Miami to Guatemala City on Empresa Guatemalteca de Aviacion, the Guatemalan government airline, is only $88, excluding taxes. Pan American's fare is 30% higher.

A flight from New York to Santiago, Chile, costs only $280 on Cinta, a Chilean line, while the cheapest fare on Panagra, its U.S.-owned competitor, is $412.

And it is $43 cheaper to fly from Chicago to Sao Paulo, Brazil, on Real Aerovias, a Brazilian carrier, than it is to take Braniff Airways.

Foreign Competition

While more than 80 lines battle for Latin American traffic, including such U.S. carriers as Pan Am, Braniff Airways, American Airlines, National Airlines, Eastern Air Lines, and Pan American-Grace Airways, only eight foreign carriers contend with Pan American Airways and Trans World Airlines for the trans-atlantic traffic, and only two foreign airlines compete with Pan American and Northwest Airlines for the cross-Pacific business to and from the U.S.

Foreign-owned airlines raked in some $238 million from globe-trotting Americans in 1956. This was 44% of the total the U.S. travelers spent on international air travel that year and compared with 43% in 1955.

Growing foreign competition is particularly painful to American carriers now. The average profit margin of the U.S. carriers has plunged to about 3.2% from as high as 7% in 1952. One U.S. airline, Braniff, already is receiving a Federal subsidy on its South American routes: $700,000 for fiscal 1958, for instance. And there is talk in the industry that other lines, such as Panagra, soon might ask for Federal aid. Even an interim 6.4% increase in fares, granted this week by the Civil Aeronautics Board, is termed "inadequate" by many of the U.S. airlines to solve their growing financial troubles.

In addition, the toughening competition comes just at the time the Yankee lines are trying to raise more than $2 billion to purchase some 340 new jet and turbo-prop craft which they have on order.

Pan Am's Revenues

Pan American officials say the Latin competition is becoming so rigorous that its Latin division yields only 5.8 cents on each mile traveled by a paying passenger compared with a yield of 7.9 cents per passenger-revenue mile on Pan Am's transatlantic flights.

For an idea of how the Latin airlines are swarming into this country, stroll down the flight line here at Miami's International Airport, the favorite port-of-entry for the Latin lines. No fewer than 22 Latin American airlines touch down here with such craft as DC-4's, Constellations, Viscounts and converted C-46's. Five of these lines have made their maiden flights to the U.S. within the past year. Ten years ago only two airlines from the south ventured this far north.

More newcomers are expected this year. "There probably will be one or two Argentine airlines, one from Haiti and another from Ecuador in Miami shortly," says Thomas R. Green who makes a practice of keeping track of such plans. Mr. Green is president of Dispatch Services, Inc., which contracts to operate ground crews and ticket agents for the foreign lines.

The U.S. doesn't permit foreign lines to compete with domestic carriers for business and passengers traveling between U.S. cities. However, a foreign line with proper permission can offer its international service to and from other points in the U.S. besides just such coastal spots as Miami. Consequently, many Latin lines are now pushing their service inland and to the busy U.S.-European runs to compete with the international service of U.S. lines.

Continued From First Page

naves de Mexico started Mexico City-New York flights in December. Empresa de Viacao Aerea Rio Grandense, a Brazilian airline known as Varig, is negotiating for approval to begin service to Europe this year. In these European operations, of course, the Latins also compete with U.S. airlines.

And at least one Latin line is hoping to invade the U.S. West Coast and slice off a share of the transpacific business. Real-Aerovias Brasil System, which has been flying to Chicago for the past year, hopes to obtain landing rights at Los Angeles or San Francisco as a stopover for a planned route to Tokyo. "We also would like a New York terminal," says Arlindo Maura, U.S. general manager for Real.

When a foreign airline wants to enter the U.S., or seeks to extend its service within this country, it must apply to the Civil Aeronautics Board and the State Department for approval.

U. S. Lines Complain

Yankee lines complain the C.A.B. and the State Department have been too free-handed in granting such permission. The agencies argue that permission is granted only on a reciprocal basis; when a Brazilian line, for example, is granted the right to enter the U.S., Brazil, in turn, must grant similar rights to a U.S. line. The agencies say that no permission has been granted without repayment.

"By and large," claims an executive of one Latin American line, "the United States has given the Latin lines a shabby deal. Until the recent bilateral agreements between the U.S. and Mexico, there were nine U.S. lines operating into Mexico and only one Mexican line going into the U.S. and it was partly owned by Pan American."

There are some reasons besides lower fares that explain why Latin airlines are doing so well. For one thing, many South and Central Americans prefer to fly on lines operated by fellow-countrymen as a matter of national pride.

Lower Fares

But the main reason is the lower fares offered by many of the Latin airlines. In the word of a Honduras airline executive: "You might say we fly the barefoot trade."

Not all Latin airlines offer fares lower than their North American competition. Some of them, like most U.S. lines, belong to the International Air Transport Association which sets uniform prices on overseas runs. These include such lines as Cubana de Aviacion and Varig, a Brazilian line, which fly such up-to-date planes as the Viscount and Super Constellation. A majority of the Latin lines, however, do not belong to the I.A.T.A. and consequently do not abide by the association's rules on fares.

One reason these lines are able to tempt passengers with lower fares is that they fly what the U.S. lines are inclined to class as jitney or second-hand equipment. Most bargain-priced Latin international flights are made in DC-4's which lumber along at 220 miles per hour. A Constellation cruises at 300 and a Super Constellation or DC-7 sails along at 340 to 360 miles per hour.

Cost of jitney equipment, most of which was purchased used or from Government surplus, is much lower than that of new planes used by the North American lines. Transportes Aereos Nacionales, a Honduran airline known as TAN, which flies four converted C-46's, paid only $3,000 for its first plane, says its vice president and general manager, C. N. Shelton. He declines to name the prices paid for the other three, but says, "We couldn't operate without the inexpensive equipment." A new DC-7B carries a price tag of $3,250,000.

Another reason that the Latins can operate on the low fare schedule is cheaper wage rates. The president of a line in Peru says wages in South America are a third less than in the United States.

Also helping the Latins keep their fares down is considerable aid from their own governments. The Air Transport Association complains that in a recent eight year period Argentina put $83 million into its airlines either in direct cash subsidy or stock ownership. And some of the lines, of course, are government-owned and can get by with smaller profits than privately-owned carriers.

Lower Taxes

Too, many of the Latin flyers are not hit as hard by taxes as their Yankee competitors. For example, while U.S. corporations pay income taxes as high as 52% of their profits, Honduras, the home of TAN, has a tax rate of 20% to 25%, says TAN's Mr. Shelton. "There's no doubt about it," he says, "lower income taxes are one reason we can charge lower fares."

Another cost-cutting technique peculiar to the Latin lines: A freer mixing of cargo and passengers than the U.S. lines. "We may have diplomats and a consignment of monkeys, ant eaters, snakes, tropical fish or even penguins on the same flight," says George Poulos, district traffic and sales manager for Aerovias Panama. Thus, a flight short on passengers can make up the difference by increasing its cargo. TAN, for instance, equips its planes with fold-away seats to expand or contract the passenger and cargo compartments depending on the day's business.

Many passengers are lured to the Latin lines because they often offer more direct routes than a competing North American line.

Non-Stop Flight

"We fly cheaper than anyone else because our route goes direct and non-stop from Miami to Guatemala City," says John Farrow, a sandy-haired Englishman who is U.S. traffic and sales manager for Aviateca. Pan Am's flight to the same point has stops at Havana and Merida, Mexico.

While most Latin planes are older and slower than their competing U.S. counterparts, their safety records are as good as those of U.S. flights, the Latins stoutly insist.

They also offer, in some instances, passenger amenities comparable to their Yankee competition.

Aerovias Panama Airways, which charges only $66 for a one-way flight from Miami to Panama City, compared with $94 on a U.S. line, serves hot meals, has three stewardesses to look after the comfort of passengers and serves beverages including cocktails and hard liquor, free.

"We can serve free drinks because we buy

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our liquor at Panamanian instead of U.S. prices," explains A.P.A.'s Mr. Poulos. A note for Scotch fanciers: He says a fifth of Ballentine's Scotch whiskey sells for $2.80 in Panama compared with $6.50 in the United States.

To meet the Latin competition the U.S. lines rely on faster schedules and better equipment and stress Yankee know-how. Panagra will get four of the first Douglas jets delivered to Pan Am to assure Panagra a "strong competitive position in its area." Panagra is owned by Pan Am and W. R. Grace & Co.

The Latin lines are also making progress toward modernization of equipment. Cubana de Aviacion already is flying Vickers Viscount turbo-props and is ordering Boeing 707 jets and Bristol Britannia turbo-props. Varig has two French Caravelle jets on order and is considering increasing the number to five.

More Modern Planes

The Latin lines hope to be even more competitive as they get additional modern equipment. "We expect a lot of business out of the Midwest when we put Super Constellations on our flight to Chicago," says Real's Mr. Moura. Real will take delivery on four Super H Constellations early this year to replace DC-4's on the company's runs connecting Buenos Aires, Rio de Janeiro, Miami and Chicago.

Ironically, the U.S. lines are responsible, in part at least, for the vitality of the Latin airlines. Pan American started 13 Latin lines to act as short-haul feeders for its international service and mapped out routes, trained pilots, ground personnel and pioneered public acceptance. Now many of the lines, in which Pan Am still holds a minority interest, are competing internationally.

North Americans still supply many Latin lines with know-how. TAN, Aerolineas Peruanas and Compania Equatoriana de Aviacion, for example, use American pilots.

North Americans also bankroll some of the growing Latin lines. American Winston Guest, for example, financially backs Guest Aerovias Mexico, 52% of which is owned by Mexican nationals, according to Mr. Merteiro, the line's general manager.

Just how fat the bankrolls of the Latin airlines are is hard to determine. Most of the lines are reluctant to talk about their financial health. Their status is further complicated by a frequent intermingling of private and government money in the enterprise.

TAN's general manager, Mr. Shelton, says the now-profitable airline hardly broke even from the time it was established in 1947 until its route was extended to Lima in 1954. "It was a struggle until then," Mr. Shelton says.

Compania Mexicana de Aviacion, whose stock is listed in Mexico City, is another profitable company. In 1956 it earned over $1 million, or 7.5% on gross receipts.

Pan Am executives ruefully point out, the lucrative Atlantic Div. is carrying the losses suffered by its former help mate.

I. Pan Am's Battlefields

One hot spot in the passenger war is Caracas, Venezuela.

A year ago, Pan Am was doing a thriving business on the blue-ribbon run to New York. In 1956, LAV, the Venezuelan government's own flag carrier, had begun losing its 55% share of traffic on the same run because of several crashes. Pan Am's 45% share gradually rose to 60%.

Then, KLM obtained a route from the island of Curacao in the Dutch West Indies to New York. That linked up nicely with its four flights weekly from Curacao to Caracas. Now KLM has grabbed 10% of the Caracas-N. Y. traffic, and its share is rising. To keep the customers happy, it serves up plenty of drinks, food, liquor samples for men, and small bottles of perfume for women even on the one-hour hop from Caracas to Curacao.

To protect LAV, the Venezuelan government is holding down KLM's flight frequency and lift capacity out of Caracas. Pan Am is taking its case to the government, claiming that KLM is soaking up the overflow from Pan Am and is asking permission to operate more flights. Meanwhile, KLM has behind-the-scenes leverage—the government's desire to keep on good relations with the Netherlands because of large Dutch investments in Venezuela oil fields.

• **Trouble Spreads**—To the south, Pan Am is feeling the bite of competition from Brazil's REAL, which flies from Buenos Aires through Caracas to Miami and Chicago. At first, REAL's cut-rate fares put a dent in Pan Am's traffic. Now, with two REAL flights converted to the higher IATA fares, Pan Am is taking a licking only on the Monday flight to Miami that the Brazilian line continues to run at discount prices.

That's not all the competition, either. Argentina's new Transcontinental is seeking passenger rights to Caracas.

LAV, bolstered by government subsidies, is trying to make a comeback on the Caracas-N. Y. route. American-owned Guest Aerovias Mexico is hurting Pan Am on the Caracas-Mexico City leg of the milk run to Los Angeles.

Pan Am is striking back to maintain its position. At hot Maiquetia airport, it has installed the terminal's only air-conditioned waiting room; it has just started a fly-now, pay-later plan. Two months ago, it sparked up its cabin service on its east coast route through South America by adding a third stewardess and offering free liquor to first-class passengers at all hours.

II. Panagra's Arena

Panagra, on its part, has seen a flood of newcomers in the past few years, all pocketing for west coast business.

Braniff, operating through Lima, flies over the scenic Andes to both Rio de Janeiro and Buenos Aires. It boasts top-quality "Golden Service" on its first-class flights: charcoal-broiled steaks, rock cornish game hen, and bassinets and specially prepared foods for babies. Late next year, it will begin using Boeing 707s—after, as a Braniff official puts it, "Pan Am and others have done the spadework of getting the public to accept jets."

• **Cut-Rate Poachers**—Panagra's real stumbling block has not been Braniff, but the cut-rate carriers that have been poaching on its territory since 1956. One of these is Chile's CINTA, a tiny line that started business domestically by flying from Santiago to the Chuquicamata and Potrerillos copper mines. Then, two years ago, it won rights into New York. It charged a round-trip tourist fare Buenos Aires to New York roughly one-third Panagra's price. It ran fully booked flights twice weekly. Soon, Panagra was flying the same run with many empty seats.

To make matters worse, Honduras' TAN got into the act. This fast-moving line was formed nine years ago by American businessmen, with not much more than a few C-46 Curtiss Commandos. It spread its wings to Central American capitals and to Miami, Havana, Quito, and Lima; soon worked out an interchange with Aerolineas Peruanas (APSA) to carry TAN passengers from Lima on down to Buenos Aires. Finally, it acquired three DC-6s. It sold round-trip tickets Miami-Buenos Aires for $451.80, against the IATA rate of $779. Before long, TAN was winning acceptance from U.S and Latin businessmen (partly because it gave first-class baggage allowances on a tourist ticket).

• **Retaliation**—Smarting from this competition, Panagra snapped back by selling tickets in Santiago at a special peso rate. This cut its prices in Chile by several hundred dollars. Then, Panagra, Pan Am, and other IATA carriers won permission to sell round-trip tourist flights in the U.S. at a special 30-day excursion rate—$638.40 New York-Buenos Aires.

III. The Rich Market

It's no surprise, when you look at Latin American geography, that so many lines have sprung up. Even before World War II, when Latin countries were far less developed than now, coun-

ANNEX 40G

TIME - NEW YORK, N.Y. - MAY 5, 1958

TRANSPORT

Aerial Battle

International airline operations in Latin America, only 13 years ago the virtually unchallenged preserve of Pan American World Airways and Panagra, have become the world's hottest commercial aerial battle. Fifty-six international lines, including 37 fast comets incorporated in Latin America, now fight for passengers.

The newcomers are grabbing business mainly by making themselves the "discount houses of the air." Brazil's big Real-Aerovias, charges only $432 for the round-trip excursion flight between Miami and Buenos Aires, as compared with the $779 asked by International Air Transport Association members such as Pan American. Panama's Aeroviss flies from Panama to Miami for $55, v. the standard $90—and serves Scotch highballs on the house. Last week, grimly preparing to meet the competition, Panagra got set to introduce an excursion fare of its own that will undercut I.A.T.A. rates by 30%.*

On the Cheap. Latin American airlines make rate-cutting work by an assortment of economies. Many fly aerial jitneys, such as war-surplus C-46s converted from U.S. Air Force freighters into lumbering passenger planes. Chile's thriving Linea Aerea Nacional paints its four-engined sixteen-passenger yellow and green, and calls one flight *El Latinoamericano* in courtesy association to Panagra's crack *El Inter-Americano*—but not even dubbing the plane "Super DC-4B" makes it anything but an unpressurized, 230-m.p.h. DC-4.

Other lines save enough on wages and low taxes to spy up-to-the-minute equipment. To fly four 325-m.p.h. Super-H Constellations, Real's chief pilots get $1500 a month, only about half what a U.S. captain makes for the same job. Nicaragua's tiny Lanica line recently put a pair of turboprop Viscounts on its Miami-Lima service.

Champagne Fare. But many Latin American airlines in the international runs have not had to cut rates to get business. Chile's Linea Aérea Nacional, for example, is subsidized by the government, does a sizable business at I.A.T.A. rates by appealing to national pride. Others offer special services, such as the direct European flights of Panair do Brasil. Cubana Airlines and Colombia's 38-year-old Avianca.

Varig of Brazil offers champagne-and-lobster catering. The turboprop Britannias of Aeronaves de Mexico feature speed; they have cut the New York-Mexico City flight to 6½ hours. Safety standards are generally high because international airlines must meet the requirements of the strictest country they land in, which in the case of 16 Latin American airlines is the U.S.

Fair Prospects. "Sure there's plenty of international competition," says Real-Aerovias President Linneu Gomes, "but we can beat it. We offer speed, service, safety and new planes." Real has built its fleet to 120 (v. Panagra's 19), and most of the other lines have big plans. The state-owned Argentine Airline is wrapping up a $28 million deal for six de Havilland Comet 4 pure jets to start 13-hour service between Buenos Aires and New York (almost a year before Panagra gets DC-8 jets on the same run). Varig has ordered French Caravelle jets; Real has bought four Convair jet 880s, will fly a route to Tokyo.

The effect is bound to be a tighter squeeze on U.S. carriers. Braniff Airways, which began flying to Buenos Aires in 1948 and still gets a U.S. subsidy ($550,000 in the first half of 1957), may have to ask for more. Pan American's Latin American division, which in 1956 went off subsidy that had been averaging $11 million a year, and Panagra, which went off subsidy at the end of 1954, may have to appeal again for aid from the U.S.

* Sample round-trip fares:

	Panagra excursion	I.A.T.A. tourist
New York-Lima	$268.40	$367.40
New York-Santiago	376.80	771.60
New York-Buenos Aires	432.40	872.60

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ANNEX 40H

Latin America Threatens U. S. Supremacy in Aviation

By John B. McDermott

Chicago Daily News Service

BARRANQUILLA, Colombia, Sept. 21. — Aerial congestion in Latin America is beginning to resemble bumper-to-bumper Sunday driving in the United States. It also is endangering the position of the United States as world leader in commercial aviation.

Privately owned American companies are being caught in a squeeze play by foreign government-operated airlines—especially European companies—which do not have to worry about profit and loss to stay alive.

A quick check of airlines operating in this part of the world — from Florida and Texas to Argentina—brings some startling disclosures in commercial air development.

A crazy-quilt pattern of more than 30 international air carriers headed by Pan American World Airways, and countless domestic and nonscheduled airlines, criss-crosses Central America, the Caribbean and South America.

Rugged mountains and underdeveloped or nonexistent surface means of travel have resulted in airlines giving many of these nations access to the outside world.

These hop, skip and jump routes have made it possible for tourists, businessmen and freight alike to be shuttled from one country to another with clock-like regularity. Trade and commerce among the nations of North and South America, as well as an interchange of ideas, is one of the important results from this air expansion.

But so great has it become, that it threatens to choke some of the carriers.

The lack of break-even payloads would long since have thinned the ranks had the airlines been forced to depend on their own earnings. Many of the non-American lines, however, are government-subsidized and profit or loss from a strictly business viewpoint makes little difference to them.

The big influx of foreign carriers into the Latin American field cultivated by PAA came immediately after World War II.

Up to 1940, only 10 international airlines served Latin America. By 1951, with European carriers moving in en masse, the total had jumped to 44. It now stands at better than 80, with others attempting to move in.

Royal Dutch Airlines (KLM), British Overseas Airways Corp. and Air France are now almost as conspicuous at many international airdromes in Latin America as is the big blue and white wing-of-the-world symbol of PAA.

Italian, Spanish, Scandinavian and Swiss aircraft also are flying in this hemisphere, along with fast-developing airlines sponsored by many of the Latin governments.

BOAC first started service to the Caribbean area to serve the British West Indies. It now flies all the way to Buenos Aires and across to Santiago, Chile. KLM, which moved southwestward from Europe to serve the Netherlands West Indies and Surinam, now reaches into Mexico and Central America.

Even Japan is bidding for Latin American connections.

WASHINGTON POST

and

TIMES HERALD

SEPTEMBER 22, 1954

ANNEX 42A

COMPARISON OF FARES CHARGED BY COMPETING AIRLINES (SOUTHBOUND)

April 1959

	Regular Tourist Fares	
	One Way	Round Trip
New York to Santiago		
Panagra	$414.80	$771.60
Aerolineas Argentinas	351.20	632.20
CINTA-ALA	296.10	525.60
Miami to Santiago		
Panagra	368.00	678.00
LAN	258.00	464.00
CINTA-ALA	232.50	418.50
TAN/CEA/APSA	210.00	378.00
Lima to Santiago		
Panagra, Canadian Pacific and LAN	126.00	242.00
TAN/CEA/APSA	70.00	126.00
Panama to Santiago		
Panagra	284.00	526.00
LAN	180.00	345.00
CINTA-ALA	177.00	318.60
TAN/CEA/APSA	160.00	288.00
New York to Buenos Aires		
Panagra, Pan American, Braniff and Varig	461.50	878.00
Transcontinental	458.00	872.60
Aerolineas Argentinas	351.20	632.20
Miami to Buenos Aires		
Panagra, Braniff	414.70	784.40
LAN	288.00	519.00
TAN/CEA/APSA	251.00	451.80
Lima to Buenos Aires		
Panagra, Braniff, Canadian Pacific and LAN	180.00	340.00
TAN/CEA/APSA	111.00	199.80
Miami to Lima		
Panagra, Braniff	262.00	473.40
LAN	183.00	331.00
LANICA	180.00	324.00
TAN/CEA/APSA	150.00	270.00
APA	145.00	260.00

Source: Official Airline Guide, World-Wide Edition, April 1959.

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ANNEX 43

COMPARISON OF FARES CHARGED BY COMPETING AIRLINES (NORTHBOUND)

APRIL 1959

	Regular Tourist Fares			
	One Way		Round Trip	
Santiago to New York				
Panagra	$414.80(a)	$208.65(b)	$771.60(a)	$386.27(b)
CINTA-ALA	192.80(b)(c)		347.04(b)(c)	
Aerolineas Argentinas	173.94(b)		313.09(b)	
Santiago to Miami				
Panagra	368.00(a)	155.10(b)	678.00(a)	279.17(b)
TAN/CEA/APSA	157.14(b)		282.86(b)	
LAN	155.10(b)		279.17(b)	
CINTA-ALA	152.48(b)(c)		274.46(b)(c)	
Santiago to Lima				
Panagra	126.00(a)	48.00(b)	242.00(a)	92.19(b)
Canadian Pacific	126.00(a)	70.20(b)	242.00(a)	153.68(b)
LAN	51.22(b)		92.19(b)	
TAN/CEA/APSA	48.00(b)		86.40(b)	
Santiago to Panama				
Panagra	284.00(a)	119.35(b)	526.00(a)	214.84(b)
LAN, CINTA-ALA, and TAN/CEA APSA	119.35(b)		214.84(b)	
Buenos Aires to New York				
Panagra, Pan American, Braniff and Varig	461.50(a)		878.00(a)	646.10(d)
Aerolineas Argentinas	461.50(a)		878.00(a)	671.30(d)
Transcontinental	458.00		872.60	582.96(d)
Buenos Aires to Miami				
Panagra, Braniff	414.70(a)		784.40(a)	580.60(d)
LAN	288.00		519.00	
TAN/CEA/APSA	251.00		451.80	
Buenos Aires to Lima				
Panagra, Braniff, Canadian Pacific, LAN	180.00(a)		340.00(a)	
TAN/CEA/APSA	111.00		199.80	
Lima to Miami				
Panagra, Braniff and LAN	183.00(a)		331.00(a)	
LANICA	180.00		324.00	
TAN/CEA/APSA	150.00		270.00	
APA	145.00		260.00	

Notes (a) Regular IATA Tourist fare

(b) Chilean peso fares converted to dollars at 1,050 pesos per U. S. $, the free market exchange rate on April 2, 1959.

(c) Change of plane at Havana.

(d) 45 day round trip excursion fare.

Source: Official Airline Guide, World-Wide Edition, April 1959 and Company Records.

PRINCIPAL COMPETING CARRIERS SERVING PANAGRA ROUTES OR ALTERNATES

April 1959

IATA Carriers	Carrier	Nationality	Commenced Competing	Principal Competitive Routings	Equipment Used	Fare Structure
ARG	Aerolineas Argentinas	Argentine	1950	Santiago/Buenos Aires/Rio/New York	DC-6(a)	IATA
AF	Air France	French	1958	Lima/Quito/Bogota/Caracas/Europe	Constellation	IATA
AVIANCA	Aerovias Nacionales de Colombia	Colombian	1957	Lima/Quito/Bogota/Miami	Constellation	IATA
BN	Braniff International Airways	U. S.	1948	Buenos Aires/Asuncion/La Paz/Lima/Guayaquil/ Panama/Miami/Washington/New York	DC-7C, DC-6	IATA
CPAL	Canadian Pacific Airlines	Canadian	1953	Buenos Aires/Santiago/Lima/Mexico	DC-6B	IATA
KLM	Royal Dutch Airlines	Dutch	1952	Santiago/Buenos Aires/Rio/Europe/Lima/ Guayaquil/Panama/Europe	DC-7C Constellation	IATA
LAN	Linea Aerea Nacional de Chile	Chilean	1932	Buenos Aires/Santiago/Lima/Panama/Miami/ Santiago/Arica/La Paz	DC-6B Martin 202	Cut rate(b)
LAV	Linea Aeropostal Venezolana	Venezuelan	1951	Lima/Caracas/New York	Constellation	IATA
LH	Lufthansa German Airlines	West German	1958	Santiago/Buenos Aires/Europe	Constellation	IATA
PAA	Pan American World Airways	U. S.	1929	Buenos Aires/Rio/Caracas/New York	DC-7B	IATA
REAL	Aerovias Brasil System	Brazilian	1948	Buenos Aires/Rio/Miami	Constellation	IATA
SA	Scandinavian Airlines System	Scandinavian	1951	Santiago/Buenos Aires/Europe	DC-7C	IATA
VARG	Empresa de Viacao Aera Rio Grandense	Brazilian	1955	Buenos Aires/Rio/New York	Constellation Convair 240	IATA
NON-IATA Carriers						
(c) TAN	Transportes Aereos Nacionales	Honduran	1954	Tegucigalpa/Miami	DC-6	Cut rate
(c) CEA	Compania Ecuatoriana de Aviacion	Ecuadorean	1957	Santiago/Lima/Guayaquil/Quito/Cali/Panama/Miami	DC-6	Cut rate
(c) APSA	Aerolineas Peruanas S. A.	Peruvian	1957	Buenos Aires/Antofagasta/Lima/Guayaquil/ Tegucigalpa/Miami	DC-6	Cut rate
APA	Aerovias Panama Airways	Panamanian	1955	Lima/Guayaquil/Panama/Miami(d)	DC-4	Cut rate
CINTA-ALA	Chilean Airlines	Chilean	1956	Santiago/Guayaquil/Panama/Havana(e)	Constellation	Cut rate
LAB	Lloyd Aereo Boliviano	Bolivian	1958	Arica/La Paz/Cochabamba	DC-4	Cut rate
LLOYD	Lloyd Aereo Colombiano	Colombian	1958	Bogota/Barranquilla/Miami	C-46	Cut rate
LANICA	Linea Aerea de Nicaragua	Nicaraguan	1958	Lima/Guayaquil/Managua/Miami	Viscount	Cut rate
TRANSCONTINENTAL	Transcontinental, S. A.	Argentine	1958	Buenos Aires/Sao Paulo/Rio/Caracas/New York	Constellation	IATA
Carriers Planning Operations						
AUSTRAL	Austral Compania Argentina	Argentine		Buenos Aires to U. S. via West Coast of S. A.	C-47	Cut rate
INI	Aerolineas Ini y Cia.	Argentine		Buenos Aires/Santiago/Antofagasta/Lima	DC-6	Cut rate
PAW	Peru Airways	Peruvian		Buenos Aires/Santiago/Lima	DC-4	Cut rate
PLUNA	Primeras Lineas Aeras Uruguayas	Uruguayan		Montevideo/Buenos Aires/Santiago/Lima	Viscount	Cut rate

Notes:

(a) Pure jet Comet 4 service BUE/SCL April 10, 1959. Pure jet Comet 4 service BUE/LGA May 29, 1959.

(b) This carrier is a member of IATA but charges reduced fares pursuant to a Resolution 115 filing.

(c) TAN and APSA operate under an interchange agreement and along with APA and CEA appear to be under common management and control.

(d) Connects once weekly with RAS (Rutas Aereas de Colombia) at Panama; flight continues Panama/Medellin/Manaos/Rio.

(e) Interchange with Cubana at Havana for Miami and New York.

Source: Official Airline Guide, World Wide Edition, April 1959.

ANNEX 401

AVIATION DAILY .. JULY 30, 1958

U.S. - SOUTH AMERICA FARE WAR THREATENS

An all-out fare war between airlines on U.S.-South America routes is now a distinct possibility.

U.S. airlines fear that the result of such a war would be a return to substantial subsidies. At least some of them believe it is urgent that the U.S. government attempt to stabilize the fares through conferences with South American nations.

Lineas Aereas Nacional (Chile), a member of the International Air Transport Association, has already informed the world's airlines that it will break the IATA fare level and offer cut rates when it opens service in August between Miami and South American points. An IATA member is permitted to take this step to meet non-IATA competition.

The IATA carriers have faced cut-rate competition for a long time on South American routes, but the non-IATA lines have been operating with obsolete equipment such as C-46s and DC-4s. Now, however, newer planes are being put into service. For example, Transportes Aereos de Honduras (TAN), a non-IATA carrier, is advertising DC-6 service Miami-Buenos Aires for $251 one-way, with complimentary hot meals and mixed drinks. The IATA tourist fare is $412. TAN also offers Miami-Lima service for $150 against the lowest IATA fare of $262.

LAN will break IATA fares from Miami to Panama City, Lima, Santiago and Buenos Aires, and from Panama City to Lima and Santiago. It said it was doing so to meet competition of the following non-IATA lines: Aerovias Panama Airways (APA), Aerolineas Peruanas S.A. (APSA), Compania Ecuatoriana de Aviacion (CEA), CINTA Chilean Airlines, Lineas Aereas de Nicaragua S.A. (LANICA), Transportes Aereos de Honduras (TAN), and Primeras Lineas Aereas Uruguayas.

LAN Tells of Unsurpassed Number of Competitors

LAN told IATA that "in the last year the non-IATA competition along the west coast of South America and the United States has come to a never surpassed limit in the number of carriers involved, the quality of equipment operated, the kind of service provided, and the level of fares being applied. The fares and practices agreed by IATA members at Miami and subsequent meetings have provided no relief from this competition to sustain a member's revenue factors.

"We realize that the fares we are hereby filing will eventually result in breaking the IATA fare level throughout a large portion of Conference 1, but, as LAN has so continuously stated, there is no other way to meet this competition or defend a member's interest. Therefore, we intend to maintain this filing in effect until the reasons and needs for it have ceased to exist."

Even with older equipment, the low-rate carriers have drained considerable business from Pan American, Panagra and Braniff, and the situation is worsening. Some observers say this can lead to a return to subsidy. Likewise, an all-out rate war could lead to subsidy.

Those close to the situation believe that the only solution is for the U.S. government to attempt to get assurances from South American nations that all U.S.-South America services will adhere to IATA fares. They emphasize that this must be handled by governments.

A high airline official told the DAILY: "It's ridiculous to say that IATA is a cartel that keeps fares high -- all you have to do is to look at the low profits being made on international operations. There's a lot of argument and a lot of give-and-take in IATA before agreements are reached on fares. Also, the governments have the final say anyway because they have to approve the fares. A rate war certainly isn't the answer."

ANNEX 40J

NEW YORK HERALD TRIBUNE

APRIL 3, 1958

Reds Challenge U. S. For Civil Air Lead

Defense Dept. Concerned Over Soviet Drive in South America

By Ansel E. Talbert
Military and Aviation Editor

Herald Tribune Special

The Defense Department is gravely concerned today about the "formidable capability" which the Soviet Union is developing to challenge United States leadership in international civil aviation.

"This is a world-wide matter which will affect political, military and economic affairs in the Middle East, the Far East, Western Europe and Africa and in the opinion of top American government experts on Russian affairs "represents the maturing of long-standing Soviet objectives." But the Defense Department is particularly concerned right now over Soviet activities and intentions in many parts of Latin America—not generally recognized at the moment as a really active theater of Soviet expansion.

In one of the clearest and most unequivocal official statements made on the enormous past, present and future value of America's international air lines to national and hemispheric security, the Judge Advocate General's Department of the Air Force, on behalf of the Defense Department, has within the last month told the Civil Aeronautics Board:

"The Soviets appear to be fully aware of the value of (civil) air transportation as a means to achieve their goals. . . . This Latin America is an important target is evidenced by the increasing Soviet efforts to penetrate the area through trade agreements and offers of economic assistance. . . . The Department of Defense is mindful of the experiences of the United States government prior to World War II with respect to foreign-dominated air lines in Latin America. . . . To avoid any possibility of similar situations occurring in Latin America or elsewhere in the world, it appears to the department that American companies should be encouraged to assist smaller nations in the development and operation of their transportation systems with particular emphasis on domestic and regional operations."

What Defense Department chiefs have in mind is the fact that on the eve of World War II in 1939, there was a Nazi-controlled or influenced air transport network of more than 12,000 miles of routes in Latin America — as compared with less than 6,000 miles of routes operated or sponsored by the United States. Over a year before the war's outbreak, the New York Herald Tribune revealed the existence of "a serious threat to the commercial air supremacy which this country has enjoyed for years in South America, thanks to . . service operated by Pan American and Pan American-Grace Airways (Panagra)."

The threat was described as consisting of a "vastly expanded system of German-operated air lines penetrating to nearly all capitals of the continent."

With the full co-operation of pro-American groups in Latin America and the encouragement and assistance of the United States government, this Nazi-dominated air network was broken up and replaced with American-flag services. Latin American air lines also were helped to organize and given widespread technical and managerial assistance.

Pan American, for example, did a tremendous job and up to the present has continued to supply "know-how" and in some cases retained a minority stock interest in national air lines in Brazil, Costa Rica, Venezuela and several other Latin American nations. It was a current C. A. B. hearing on the question of whether Pan American should be allowed to retain 33 per cent interest in Lineas Aereas Costarricenses, S. A., which drew official Defense Department comment that it is "militarily important that domestic air transport operations in Costa Rica continue under aegis of the United States."

The State Department also offered its opinion in a classified document which has not been made public. But there would appear to be no disagreement between the Defense Department and State Department positions for the official "State Department Bulletin" in December quoted Douglas Dillon, Deputy Under Secretary of State for Economic Affairs, as saying:

"If the Communists succeed in winning over the peoples of the less developed countries, or any substantial number of them, the free world will be gravely weakened—just as certainly as it would be if these countries had been conquered by Red Armies."

Mr. Dillon stressed that the "moderate help" from the United States which might mean the difference whether these less developed nations stayed free must include "technical assistance — training in such fields as . . . transportation" and "help in industrial beginnings."

Boom Line Gets Help

The unofficial pre-Point Four aviation program south of the border carried on for nearly two decades has been taken up and used as a means of strengthening the Free World's economy on many other continents. Trans World Airlines, the chief competitor of Pan American over the North Atlantic, for example, gave invaluable aid to Lufthansa — West Germany's new air line whose name and prestige from pre-Hitler days the East German government has tried to appropriate. T W A helped to organize the post World War II Italian and Greek air line systems. At present the line has management contracts to provide American experts to run the air lines of Ethiopia and Saudi Arabia.

In 1954 Congress enacted a public law designed to establish "a program of self-help and mutual co - operation among free nations designed to develop their economic and social well-being." When the governments of Turkey, Pakistan, Thailand and Afghanistan needed technical assistance in developing their national air lines, the International Cooperation Administration—the agency responsible for administering technical assistance programs—called upon Pan American World Airways to furnish such aid. The air line did this by sending teams to each whose experience covered every phase of commercial air transport and the results in comfort, safety and economy have been remarkable.

Transocean Air Lines, an American company which is the world's largest air charter carrier, today has managerial contracts with Air Jordan, Iranian Airlines and has lent Japan Air Lines more than a score of top pilots.

Both T W A and Pan American have aided Philippine Air Lines.

The Defense Department says that American private enterprise should be "encouraged to maintain and enter into arrangements to assist technically backward nations in development of their air transport system where such assistance is welcomed by the countries concerned."

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[fol. 5398]

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ANNEX 44

C. R. A. C.

CONFERENCIA REGIONAL DE AVIACAO CIVIL

RIO DE JANEIRO, BRASIL

FINAL ACT

of the

FIRST REGIONAL CIVIL AVIATION CONFERENCE

Rio de Janeiro—1959

The Aeronautical Authorities of Argentina, Brazil, Chile, Colombia, the United States of America, Ecuador, Peru and Uruguay, having been invited by the Aeronautical Authorities of Brazil to participate in a Regional Civil Aviation Conference, nominated the following Delegations, which met in Rio de Janeiro during the period from January 19th to 26th, 1959.

ARGENTINA

Chief of Delegation:	Brigadier Angel Garcia Bollini, National Director of Civil Aeronautics
Delegates:	Dr. Antonio Pandolfo
	Dr. Oswaldo Ovidio Peres Arguelles
Advisers:	Dr. Jose Chalen
	Mr. Eduardo Morgan
	Mr. Guillermo Mendez

BRAZIL

Chief of Delegation:	Air Brigadier Dario Cavalcanti de Azambuja, Director General of Civil Aeronautics
Delegates:	Dr. Antonio Paulo Moura
	Dr. Trajano Furtado Reis
	Eng. Jose Chrysantho Seabra Fagunde
	Dr. Jose Carlos de Noronha
	Cap. Francisco Pedro Locio Cavalcanti
	Dr. Aylzio Jose de Moura Alves de Souza

CHILE

Chief of Delegation:	Dr. Vicente Gumucio, Secretary of the Civil Aeronautics Board
Delegate:	Eng. Mauricio Yanquez
Adviser:	Dr. Rene Pairoa

COLOMBIA

Chief of Delegation:	Colonel Hernan Medina, Director General of Civil Aeronautics
Delegate:	Dr. Arturo Arias A.
Advisers:	Dr. Joaquim Londono
	Dr. Juan Ucros

UNITED STATES OF AMERICA

Chief of Delegation:	Senator Chan Gurney, Vice-Chairman of the Civil Aeronautics Board
Delegate:	Mr. Irving Roth
Secretary:	Mr. John Hugh Crimmins

ECUADOR

Chief of Delegation:	Dr. Miguel Antonio Vasco, Secretary of the Rio de Janeiro Embassy of Ecuador

PERU

Chief of Delegation:	Major General Luis D. Cayo, Director General of Civil Aeronautics
Delegates:	Mr. V. Errol Marchena
	Mr. Rene Hooper Lopez
Advisers:	Dr. Luis Noya Larco
	Mr. Alfredo Oscar Llorens

URUGUAY

Chief of Delegation:	Eng. Cesar Piacenza, Director General of Civil Aeronautics
Adviser:	Mr. Luis Pena

After the inauguration of the Conference by the Brazilian Minister of Aeronautics, Air Major Brigadier Francisco de Assis Correa de Mallo, the Conference elected Air Brigadier Dario Cavalcanti de Azambuja (Brazil) as Chairman, Engineer Cesar Piacenza (Uruguay) as First Vice-Chairman, and Colonel Hernan Medina (Colombia) as Second Vice-Chairman, being appointed Secretary General Dr. Aylzio Jose de Moura Alves de Souza, Delegate of Brazil. The Conference then approved the agenda which included the following:

a) a study of the tariff situation and an examination of the causes of tariff imbalance in South America;

b) a study of measures to correct the causes of tariff imbalance;

c) regional and inter-continental air traffic;

d) competition during the transition period of air transport involving the simultaneous use of conventional and jet aircraft;

e) consultations and exchange of information between the Civil Aeronautical Authorities—American Civil Aviation Commission.

Two Committees were constituted for the study of the various items of the Agenda, viz.:

A Tariff Committee

A Legal-Economic Committee

Dr. Ovidio Perez Arguelles (Argentina) was elected Chairman of the Tariff Committee, and Dr. Rene Pairoa (Chile) as its Vice-Chairman. Engineer Jose Chrysantho Seabra Fagundes (Brazil) was elected its Rapporteur.

Dr. Vincente Gumucio (Chile) was elected Chairman of the Legal-Economic Committee; Dr. Miguel Antonio Vasco (Ecuador) Vice-Chairman and Dr. Victor Marchena (Peru) Rapporteur.

In its Plenary Sessions held on January 24th and 25th, the Conference examined the proposals of the Committees, and, after discussing them and amending some of them, approved the following recommendations, contained in the attached documents which form an integral part of the Final Act:

RECOMMENDATION No. 1: Concerning the adoption of general rules and procedures for the constructions of tariffs;

RECOMMENDATION No. 2: concerning the expression of uniform basic tariff rates in standard currency;

RECOMMENDATION No. 3: concerning agents' commissions;

RECOMMENDATION No. 4: concerning measures for avoiding unauthorized changes in tariffs;

RECOMMENDATION No. 5: concerning the establishment of a tarfff differential for jet aircraft;

RECOMMENDATION No. 6: concerning the study of operation with jet aircraft;

RECOMMENDATION No. 7: concerning the adoption of a uniform criterion for the utilization of regional traffic;

RECOMMENDATION No. 8: concerning the convocation of a Second Regional Civil Aviation Conference, and measures for coordinating the implementation of the recommendations of the Conference.

At the closing of the Plenary Sessions a Drafting Committee for the three languages was appointed, composed of:

Mr. Oswaldo Perez Arguelles (Argentina)—Chairman
Mr. Trajano Furtado Reis (Brazil)
Mr. Irving Roth (United States of America)

[fol. 5400]

During the work of the Conference various documents were issued, some of which contain the statements of some delegations on various subjects under discussion.

And, in order to make this a matter of record, the Closing Plenary Session, held on January 28, 1959, approved this Final Act, which was signed by the Delegates present at this Session in three copies, in English, Spanish and Portuguese, which shall remain deposited in the files of the Directorate of Civil Aeronautics of the Ministry of Aeronautics of Brazil, together with the documents issued during the Conference.

RECOMMENDATION NO. 1

GENERAL NORMS AND PROCEDURES TO GOVERN TARIFF CONSTRUCTION

The Regional Civil Aviation Conference

RECOMMENDS that:

1—equal tariffs, fares, rates and conditions of carriage be applied to comparable services;

2—the following be observed by all carriers enumerated in the attached list:

a) the present tariffs and their respective regulations shall be maintained in force until April 1, 1959;

b) the carriers enumerated in the attached list, duly authorized by the respective Aeronautical Authorities, when necessary, shall meet on March 16, 1959 in order to determine tariffs (fares, rates and rules) and conditions of carriage which, after approval by the governments in accordance with their respective legislation, shall become effective in lieu of those mentioned in Item a);

c) the meeting referred to in Item b) shall determine the excursion fares for travel from South America to North America, in both directions and from South America to Panama and to Cuba, in both directions which may be deemed necessary, equivalent to a minimum of seventy percent (70%) of twice the one-way fares, to become effective April 1, 1959, without prejudice to the introduction of other excursion fares on the American Continent.

d) the decisions referred to in the items b) and c) shall be unanimously adopted by the carriers. Nevertheless, if unanimity is not attained, the Governments shall, in accordance with their respective legislation, establish the tariffs to be applied by the carriers;

3—the measures adopted in keeping with these recommendations be applied simultaneously with the adoption of the free market rate of exchange;

4—the tariffs to become effective on April 1, 1959, be applied, for the period of one year, with a differential not to exceed ten percent (10%) for services of carriers considered by the respective Governments as "under-developed". This differential shall be eliminated or reduced whenever there is a change in the classification or development of any carriers, and the principle of Item 1 shall come into effect in such case.

ANNEX 40K

TRAVEL COURIER (N.Y.)
DECEMBER 1957

Fare Cuts Stir Trade Interest in Potential for So. America

A blueprint for spirited competition among IATA and non-IATA carriers, all intent on developing the vast potential in travel to South America, gave promise this month of record traffic to that continent during 1958.

Fast-moving developments included the following:

1. Major IATA lines have asked for authorization to liberalize and simplify conditions governing excursion fares.

2. TAN Airlines, operating out of Miami to Central and South America, announced in conjunction with Real Aerovias Brazil and other carriers, a round-South America fare of $446.30, or $130.50 less than the most favorable R.S.A. rate granted by IATA lines on the new group excursion plan.

3. A record number of tour offerings will be available to travel agents in 1958, including more sponsored by wholesalers already active in the South American market, plus some by newcomers now entering the field.

4. At long last there are indications that some South American countries may step forward with urgently-needed promotion for their areas. Among those flirting with the idea are Colombia, Uruguay and Brazil.

Subject to government approval, the new provisions requested by IATA members will go into effect January 1, 1958, as such carriers as Pan American-Grace Airways, Pan American World Airways, Braniff International Airways and Varig Airlines of Brazil. The revisions apply to southbound traffic, but the carriers have also requested an excursion fare program for South Americans traveling to North America.

The basic excursion fare now in use applies to individuals or groups traveling from the U. S., Canada, Cuba, Mexico, Jamaica, Haiti and the Dominican Republic to Buenos Aires, Santiago or Montevideo (depending on the airline), with four additional stops in South America required on the tour, two in each direction. The fare reduction on this trip is about 30 per cent and it must be concluded within 30 days.

The new fare structure is specifically designed to encourage group travel. For groups of eight or more persons the "most" destination of Buenos Aires, Santiago, or these cities, and return together. All and any scheduled stopovers are permitted and all travel must be completed within 30 days.

Savings for group members under the new plan, for example, are as follows: New York to Lima, round-trip tourist class, $428.40, as compared to the regular fare of $561.40; first class for the same trip is $554 as against $714.60; around South America, New York—Buenos Aires, and return is $638.40 round-trip tourist class as compared to $867; first class is $768.60 as contrasted with $988.20. From Miami round South America tourist class fare is $576.80 against the regular rate of $779.

According to officials of the carriers affected by the expansion of the excursion fare set-up, the new structure makes travel to South America highly competitive with European travel. In some instances, on a mile-by-mile comparison, rates to South America will be lower than those to Europe.

The carriers also feel that agents will be able to offer more Montevideo has been eliminated, along with the requirement of four additional stopovers.

The group—to be eligible—must travel together from the point of origin to Lima, or Rio de Janeiro, or other points south of

low-cost South America packages than previously and that there will be a greater movement to that continent by teachers, students, farmers, business and sports groups, as well as just average tourists.

A similar group excursion fare structure has also been requested by the airlines for travel from South America to North America, as well as to specific Caribbean and Central American destinations. The 30 per cent reduction would apply to passengers originating in Lima, Rio, or other cities to the south of the two capitals. The carriers have also proposed reductions for excursion group travel within South America.

Excursion fares (southbound) with the present 30 per cent discount were first introduced in April, 1956, for two or more persons traveling together. Held unfair to tourists traveling alone by the Civil Aeronautics Board, the system was revised to include this category in June, 1957.

WORLD REVIEW OF HOTELS & TRAVEL, NEW YORK, N.Y.

DECEMBER 14, 1957

ALONG THE AIR LANES

Pan American World Airways and Panagra will cut as much as 30 per cent from the regular fares to South America for groups of eight or more persons traveling together to the land of Good Neighbors. The new low fares are effective on Jan. 1 if approved by the government.

The cost for a person traveling tourist-class in a group of eight or more from New York to Lima and return will be as little as $428.40, compared to the regular fare of $561.40. The first-class fare for the same trip will be $554 as against the regular fare of $714.60.

For the traveler who wants to make the swing around South America—New York—Buenos Aires and return, the first class fare will be $768.60 as compared with the usual fare of $988.20. Tourist fare will be as low as $638.50 or $228.60 below the standard fare.

Eligibility for the new low fare requires that a group must start together from any point in the United States, Canada, Cuba, Jamaica, Haiti, or the Dominican Republic, and travel together from their point of origin to Lima, or Rio or points south of these cities and return. All travel must be completed within 30 days.

GENERAL RULES AND PROCEDURE TO GOVERN TARIFF CONSTRUCTION

List of International Carriers Referred to in Paragraph 6

1—Aerolineas Argentinas
2—Aeronaves de Mexico, S. A.
3—Aerovias Ecuatorianas, C. A.
4—Aerovias Guest, S. A.
5—Aerovias Nacionales de Colombia, S. A.
6—Aerovias Venezolanas, S. A.
7—ALA—Sociedad de Transportes Aereos Ltd.
8—Alitalia—Linee Aeree Italiane, S. p. A.
9—American Airlines, Inc.
10—APA—Awrovias Panama Airways
11—APSA—Aerolineas Peruanas
12—AUSTRAL—Cia. Argentina de Transportes Aereos
13—AVIATECA—Empresa Guatemalteca de Aviacion
14—Bahamas Airways Ltd.
15—Braniff Airways, Inc.
16—British Overseas Airways Corporation
17—British West Indian Airways, Ltd.
18—Canadian Pacific Air Lines, Ltd.
19—Compagnie Nationale Air France
20—CAUSA—Cia. Aeronautica Uruguay, S. A.
21—Cia Cubana de Aviacion, S. A.
22—CINTA—Chilean Airlines
23—Cia. Dominicana de Aviacion, C, por A.
24—Cia. Mexicana de Aviacion, S. A.
27—Delta Air Lines
28—Eastern Air Lines, Inc.
29—"Iberia", Compañia Mercantil Anonima de Lineas Aereas
30—K.L.M.—Royal Dutch Airlines

[fol. 5402]

31—LANICA—Lineas Aereas de Nicaragua, S. A.
32—Linea Aerea Nacional—Chile
33—Linea Aeropostal Venezolana
34—Lineas Aereas Costarricences, S. A.
35—Lloyd Aereo Boliviano—LAB
36—Lloyd Aereo Colombianao—LIC
37—Mackey Airlines, Inc.
38—National Airlines, Inc.
39—Northwest Airlines, Inc.
40—Pan American World Airways, Inc.
41—Pan American Grace Airways, Inc.
42—Panair do Brasil, S. A.
43—PLUNA—Primeras Lineas Aereas Uruguayas
44—"Q" Airways
45—RAS—Rutas Aereas de Colombia
46—RANSA—Rutas Aereas Nacionales, S. A. (Air Freight (
47—Real-Aerovias Brasil
48—S. A. Empresa de Viacao Aerea Rio Grandense (V.A.R.I
49—SABSA—Servicio Aereo de Honduras, S. A.
50—Scandinavian Airlines System
51—Servicos Aereos Cruzeiro do Sul, S. A.
52—SWISSAIR, Swissair Transport Company, Ltd.
55—Trans-Canada Air Lines
56—Transcontinental, S. A.
57—Trans World Airlines, Inc.
58—United Air Lines, Inc.
59—Uraba, Medellin & Central Airways, Inc.
60—Western Air Lines, Inc.

RECOMMENDATION NO. 2

STANDARD CURRENCY AND EXCHANGE

The Conference

RECOMMENDS that:

1—For the adoption of tariffs, the Aeronautical Authorities take as a basic values in standard currency;

2—Only the free market exchange rate be applied in the conversion of these basis tariffs into the currency of each country;

3—While the existing conditions of the international monetary market prevail, the U. S. dollar be the standard currency adopted for tariff construction.

RECOMMENDATION NO. 3

AGENTS' COMMISSIONS

The Conference

RECOMMENDS that:

1) The Carriers pay to sales agents and general agents, directly or indirectly, percentages of commission not to exceed the following:

Passengers

a) seven percent (7%) to travel agents, except as provided for in (b) and (c);

b) an additional three percent (3%) for sales made by general agents;

c) an additional three percent (3%) to travel agents for organization and advertisement of "all expense" tours.

Cargo

a) five percent (5%) to cargo agents;

b) an additional 2½% for sales by general agents;

2) The percentages of commission to intermediaries, if there be such, be included in the percentages indicated in Item 1, which in no case may be exceeded.

RECOMMENDATION NO. 4

MEASURES FOR AVOIDING UNAUTHORIZED TARIFF CHANGES

The Conference

RECOMMENDS that:

1—The Aeronautical Authorities take all the necessary measures to avoid any unauthorized changes in tariffs;

2—These measures should apply to those persons participating in sales, whether directly or indirectly.

[fol. 5404]

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RECOMMENDATION NO. 5

CREATION OF DIFFERENTIAL IN TARIFFS FOR JET AIRCRAFT

The Conference

RECOMMENDS that:

1—With the introduction of jet aircraft on the routes operated by conventional aircraft (piston and turbo-props), the following factors must be considered:

a) larger capacity;

b) greater speed;

c) greater range;

d) greater comfort.

2—These factors being considered, it is necessary to establish a differential to increase the tariffs applicable to jet aircraft as related to first class and tourist class tariffs for conventional aircraft, *unless the capacity and range of the jet aircraft make unnecessary such differential.*

RECOMMENDATION NO. 6

OPERATIONS WITH JET AIRCRAFT

The Conference

RECOMMENDS that: [illegible in copy]

RECOMMENDATION NO. 7

A CRITERION FOR THE UTILIZATION OF REGIONAL TRAFFIC

The Conference

RECOMMENDS that:

1—The South American Governments participating in this Conference adopt a uniform criterion for the utilization of regional traffic;

2—This criterion be, provisionally, the assignment at least 75% of the regional traffic to the carriers of the two States interested therein, the following bases being taken into consideration:

a) each of these two States shall have half of this percentage for its own carriers;

b) in case the traffic volume of the carriers of one State does not attain the percentage of 50% referred to in item *a*, the carriers of the other State shall have preference to increase their respective traffic volume until the carriers of that State attain 75% of the traffic;

c) the traffic volume of carriers of third States in regional traffic shall not exceed, in total, 25% of this regional traffic, except when the traffic volume of the regional carriers does not attain the index of 75%;

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ANNEX 47

United States Department of
COMMERCE
Sinclair Weeks, Secretary Washington 25, D. C.

Federal Maritime Board
Maritime Administration

BOARDMAN — STerling 3-5200, Ext. 4461 NR 58 — 46

FOR RELEASE MONDAY AM, JULY 14, 1958 TRADE ROUTE 2 FINDINGS PUBLISHED

A review of the essentiality and service requirements of Essential U. S. Foreign Trade Route 2 (U.S. Atlantic ports to the West Coast of South America) has been tentatively approved by Clarence G. Morse, Maritime Administrator, U. S. Department of Commerce.

The requirement for United States-flag sailings with freight vessels has been increased from the present two to approximately four per month. The recommendation for approximately weekly sailings of combination cargo-passenger vessels remains unchanged. Description of the route, unchanged from the findings as published in the Federal Register of January 6, 1955, is: Between U. S. Atlantic ports (Maine-East Coast Florida to but not including Key West) and ports on the West Coast of South America (Pacific Coast Colombia, Ecuador, Peru and Chile).

It was found that outbound liner cargo traffic on T. R. No. 2 increased from the 1951-1955 level of 500,000 tons annually to approximately 600,000 tons in 1956 and 1957. This higher level of traffic is expected to continue as a result of industrial development projects in the West Coast of South America area, and an upward adjustment in U. S.-flag freighter sailings will be necessary to meet foreign-flag competition on the route.

A finding of essentiality and determination of service requirements on a route is required before operating-differential subsidy may be paid to qualified U. S. operators on the route. At the present time Grace Line, Inc., provides the only U. S.-flag liner service on Trade Route 2, which it serves under an operating subsidy contract with the Government.

The C2 freight and combination passenger-freight vessels now operated on the route were found suitable for present service, but replacement ships tentatively scheduled for delivery in 1960-61 will need to be superior in speed and to provide substantially more total refrigerated space and dry cargo capacity than present ships. Passenger requirements will need to be re-evaluated before replacement of present combination ships according to the tentative findings.

Principal imports from the foreign area of Trade Route 2 include iron, tin, copper, lead, zinc, nitrates, coffee and bananas. Exports on the route from the Atlantic coast of the U. S. consist of a wide variety of manufactured goods and foodstuffs. Total dry cargo exports and imports on the route in 1956 were over 3 million long tons.

Any interested person, firm, or corporation may submit comments on these tentative findings to the Maritime Administration within 15 days of the date of publication in the Federal Register.

[fol. 5410]

ANNEX 48

GRACE LINE—BERTH CAPACITY

1939—1958

1939

	No. of Voyages	1st Class Capacity	1st Class Berth Capacity for year in each direction	3rd Class Capacity	3rd Class Berth Capacity for year in each direction
Santa Barbara	8	138	1,104	32	256
Santa Clara	9	159	1,431	32	288
Santa Maria	9	135	1,215	32	288
Santa Lucia	9	225	2,025	50	450
Santa Ines	8	69	552	48	384
Santa Rita	9	69	621	48	432
Total Berth Capacity In Each Direction			6,993		2,098

1958

	No. of Voyages	1st Class Capacity	1st Class Berth Capacity for year in each direction	Freighter Class Capacity	Freighter Class Berth Capacity for year in each direction
Santa Barbara Santa Cecilia Santa Isabel Santa Luisa Santa Margarita Santa Maria	51	52	2,652	—	—
Santa Catalina	7	—	—	8	56
Santa Elisa	7	—	—	12	84
Santa Ines	10	—	—	8	80
Santa Olivia	7	—	—	8	56
Santa Rita	10	—	—	12	120
Total Berth Capacity In Each Direction			2,652		396

d) the adjustment of the participation of carriers of third States to this remaining traffic shall be made gradually.

3—The quotas corresponding to the application of the percentages referred to in this Recommendation be calculated, for each year, on the basis of the average traffic volume fof the previous two years;

4—For tbe purpose of this Recommendation, regional traffic be that traffic embarked within the territory by a State and destined for the territory of a bordering State;

5—For the adoption of the criterion herein recommended, the Aeronautical Authorities of the South American States participating in this Conference take the necessary measures for its implementation in conformity with their respective legislation and with the bilateral agreements to which they may be parties.

RECOMMENDATION NO. 8

CONVOCATION OF THE SECOND REGIONAL CIVIL AVIATION CONFERENCE AND IMPLEMENTATION OF THE RECOMMENDATIONS OF THE FIRST CONFERENCE

The Conference

RECOMMENDS that:

1—The Second Regional Civil Aviation Conference be held in the Argentina Republic next year, and that consequently the National Director of Civil Aeronautics of Argentina be requested to convoke that Conference at a time deemed opportune by him after consulting the Aeronautical Authorities of the other States;

2—The National Director of Civil Aeronautics of Argentina remain in continuous contact with the Aeronautical Authorities of the other States in order to coordinate information and communications concerning the implementation of the RECOMMENDATIONS of the First Regional Civil Aviation Conference, and convoke whenever necessary, special meetings after consulting the Aeronautical Authorities of the other States.

[fol. 5406]

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ANNEX 48

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 12th day of March, 1959

In the matter of an agreement filed pursuant to section 412(a) of the Federal Aviation Act involving PAN AMERICAN WORLD AIRWAYS, INC. PAN AMERICAN-GRACE AIRWAYS, INC. and BRANIFF AIRWAYS, INC. concerning joint discussions.	Agreement CAB No. 12938

ORDER APPROVING AGREEMENT

The First Regional Civil Aviation Conference, attended by representatives of Argentina, Brazil, Chile, Colombia, Ecuador, Peru, Uruguay, and the United States of America, was held in Rio de Janeiro during January, 1959, to review various common air rate matters, including tariff construction, standard currency and exchange rates, and agents' commissions. It was the recommendation of such Conference, *inter alia*, that all carriers operating international flights in the South American area meet on March 16, 1959, to attempt to agree, subject to government approval, upon basic fares and excursion fares, and certain related matters.

On March 11, 1959, Pan American World Airways, Inc., Pan American-Grace Airways, Inc. and Braniff Airways, Inc. filed with the Board under section 412 of the Federal Aviation Act an agreement, designated CAB No. 12938, requesting that the Board "authorize the United States air carriers to participate in a meeting of Western Hemisphere carriers by air, scheduled to be held on March 16, 1959, to discuss and endeavor to arrive at agreements with the other participants, be they members or nonmembers of IATA, with respect to fares, rates, rules, agency commissions, rates of exchange to be used in converting basic dollar values into other currencies for selling purposes, and related matters."

The Board, as indicated by its representatives at the aforesaid Conference, believes that a meeting of the carriers concerned is desirable to explore further methods of resolving difficulties common to all

Accordingly, the Board finds that approval of the aforementioned agreement under section 412 is not adverse to the public interest or in violation of the Act, subject to the conditions hereinafter set forth.

ACCORDINGLY, IT IS ORDERED THAT: Said agreement be and it hereby is approved, subject to the following conditions:

1. That the approval shall terminate on April 15, 1959;

2. That the air carrier parties shall keep, and file with the Board within ten days after such meeting full and detailed minutes of the discussions herein authorized, including the record of each vote taken;

3. That any agreement or agreements reached as a result of such discussions be filed with the Board in accordance with section 412 of the Act and approved by the Board prior to being placed in effect;

4. That the approval granted herein shall extend to any other certificated air carrier which may wish to become a party to Agreement CAB No. 12938, provided such carrier files with the Board a written concurrence in said agreement; and

5. That the discussions be limited to fares, rates, rules, agency commissions, and rates of exchange pertaining to the geographical areas mentioned in Recommendation No. 1 of the Final Act of the First Regional Civil Aviation Conference.

By the Civil Aeronautics Board:

/s/ MABEL MCGART
MABEL MCGART
Acting Secretary

(SEAL)

[fol. 5408]

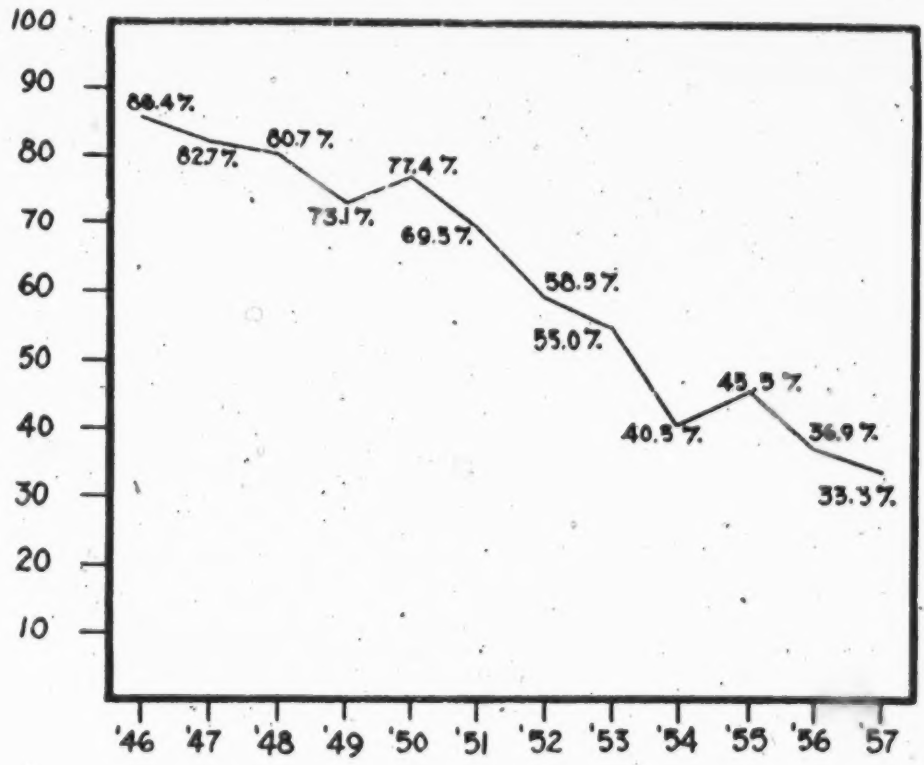
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ANNEX 46

U. S. FLAG PARTICIPATION IN CARRIAGE OF DRY CARGO BY SEA BETWEEN THE UNITED STATES AND THE WEST COAST OF SOUTH AMERICA

1946 - 1957

Percentage of Total Dry Cargo Carried by U. S. Flag Vessels



Source: Statistical Abstract of the United States, Bureau of the Census, U. S. Department of Commerce.

[fol. 5411]



starting April 8th

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It's here! The first—the only jet service to Buenos Aires, now, an incredible 12 swift hours (non-stop New York! (It's 27 hours via conventional flights).

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AERO LINEAS ARGENTINAS

[fol. 5412]

ANNEX 50

U. S. FLAG PARTICIPATION IN CARRIAGE OF DRY CARGO BETWEEN THE UNITED STATES AND THE WEST COAST OF SOUTH AMERICA

1946—1957

Percentage of Cargo Carried in U. S. Flag Vessels

Year	Exports	Imports	Total Trade
1946	74.5%	90.0%	86.4%
1947	70.2	87.0	82.7
1948	58.6	84.9	80.7
1949	47.9	78.9	73.1
1950	39.3	84.7	77.4
1951	41.1	77.2	69.5
1952	36.9	65.1	58.5
1953	34.3	59.0	55.0
1954	38.2	46.9	40.5
1955	41.2	46.6	45.5
1956	38.6	36.4	36.9
1957	42.0	32.0	33.3

SOURCE: *Statistical Abstract of the United States*, Bureau of the Census, U. S. Department of Commerce.

ANNEX 81A

U. S. ATLANTIC COAST IMPORTS AND EXPORTS TO WEST COAST OF SOUTH AMERICA

1955

All Tons of 2,000 lbs.

Source: Bureau of the Census

	Regular Carriers			Irregular Carriers			Regular and Irregular Carriers Combined		
	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %
Exports									
Colombia (West Coast Ports Only)	164,235	50,793	30.93	6,171	—	—	170,406	50,793	29.80
Ecuador	44,581	9,335	20.44	489	3	0.61	45,070	9,338	20.79
Peru	136,837	90,247	65.95	21,308	—	—	158,145	90,247	57.00
Chile	101,266	56,280	55.58	151,835	10,690	7.04	252,101	66,970	26.56
	446,919	206,655	46.02	179,803	10,693	5.03	625,722	217,348	34.73
Imports									
Colombia (West Coast Ports Only)	139,057	78,162	56.21	386	—	—	139,443	78,162	56.05
Ecuador	86,422	66,113	76.50	163,030	44,756	27.45	249,452	110,869	44.44
Peru	233,571	165,652	70.92	1,642,344	428,273	26.08	1,875,915	593,925	31.66
Chile	441,538	231,916	52.52	1,317,143	863,252	65.54	1,758,681	1,095,168	61.70
	900,588	541,843	60.16	3,122,903	1,336,281	42.78	4,023,491	1,878,124	46.70
Exports & Imports									
Colombia (West Coast Ports Only)	303,392	128,955	42.50	5,557	—	—	309,849	128,955	26.56
Ecuador	131,003	75,448	57.59	163,519	44,759	27.36	294,522	120,207	40.81
Peru	370,408	255,899	69.08	1,663,652	428,273	25.74	2,034,060	684,172	33.63
Chile	542,804	288,196	53.09	1,468,978	873,942	59.49	2,010,782	1,162,138	57.80
	1,347,607	748,498	55.54	3,302,706	1,346,974	40.78	4,649,213	2,095,472	45.07

Notes:

1. Imports-Exports from and to Bolivia are included in the Peru-Chile Figures.
2. Tonnage shown is "Dry" Cargo only except in so far as carried in tanks of carriers whose main characteristic is "Dry" Cargo.
3. Tonnage excludes all shipments valued under $500.00. The amount of cargo falling into the "under $500.00" category is not substantial. In 1957 the total amount of dry cargo exported in liner service between the United States and the West Coast of South America, excluding shipments valued under $500.00, was 2,339,700,000 pounds. A sampling of shipments between $100-$499 indicated that the total including all shipments in excess of $100 was 2,397,900,000 pounds. Bureau of the Census, Report No. FT-1000, January-December 1957.
4. Not included are shipments of the Dept. of Defense (M. A. T. S.).

[fol. 5414]

ANNEX 51B

U. S. ATLANTIC COAST IMPORTS AND EXPORTS TO WEST COAST OF SOUTH AMERICA

1936

All Tons of 2,000 lbs.

Source: Bureau of the Census

	Regular Carriers			Irregular Carriers			Regular and Irregular Carriers Combined		
	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %
Exports									
Colombia (West Coast Ports Only)	137,108	42,011	30.64	648	544	83.95	137,756	42,555	30.89
Ecuador	33,638	4,506	13.40	319	68	21.32	33,957	4,574	13.43
Peru	204,442	138,779	67.88	6,558	5,168	78.80	211,000	143,947	68.22
Chile	195,936	83,344	42.54	239,487	6,923	2.89	435,423	90,267	20.73
	571,124	268,640	47.03	247,012	12,703	5.14	818,136	281,343	34.38
Imports									
Colombia (West Coast Ports Only)	131,924	67,735	51.34	920	—	—	132,844	67,735	51.12
Ecuador	93,769	64,437	68.77	134,663	24,406	18.12	228,432	88,893	38.91
Peru	281,200	248,311	88.30	1,953,939	141,763	7.26	2,235,139	390,074	17.45
Chile	400,525	184,129	45.97	1,782,438	917,289	51.46	2,182,963	1,101,418	50.45
	907,418	564,662	62.24	3,871,960	1,083,458	27.99	4,779,378	1,648,120	34.48
Imports & Exports									
Colombia (West Coast Ports Only)	269,032	109,746	40.78	1,568	544	34.60	270,600	110,290	40.75
Ecuador	127,407	68,993	54.15	134,982	34,474	25.53	262,389	93,467	35.60
Peru	485,642	387,090	79.70	1,960,497	146,931	7.44	2,446,139	534,021	21.82
Chile	596,461	267,473	44.84	2,021,925	924,212	45.70	2,618,386	1,191,685	45.51
	1,478,542	833,302	56.36	4,118,972	1,096,161	26.61	5,597,514	1,929,463	34.29

Notes

1. Imports-Exports from and to Bolivia are included in the Peru-Chile Figures
2. Tonnage shown is "Dry" Cargo only except in so far as carried in tanks of carriers whose main characteristic is "Dry" Cargo
3. Tonnage excludes all shipments valued under $500.00
4. Not included are shipments of the Dept. of Defense (M. A. T. S.)

ANNEX 51C

U. S. ATLANTIC COAST IMPORTS AND EXPORTS TO WEST COAST OF SOUTH AMERICA

1957

All Tons of 2,000 lbs.

Source: Bureau of the Census

	Regular Carriers			Irregular Carriers			Regular and Irregular Carriers Combined		
	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %
Exports									
Colombia (West Coast Ports Only)	105,470	42,904	40.68	14	—	—	105,484	42,904	40.67
Ecuador	38,099	4,039	10.60	16	—	—	38,115	4,039	10.59
Peru	205,958	154,849	75.18	31,470	—	—	237,428	154,849	65.64
Chile	180,271	90,931	50.44	195,987	—	—	376,258	90,931	24.16
	529,798	292,723	55.25	227,487	—	—	757,285	292,723	38.66
Imports									
Colombia (West Coast Ports Only)	157,385	71,324	45.32	75	—	—	157,460	71,324	45.33
Ecuador	105,700	80,256	75.93	153,890	11,369	7.39	259,590	91,625	35.68
Peru	313,592	281,674	89.72	2,346,086	—	—	2,659,678	281,674	10.59
Chile	553,558	284,430	51.38	2,971,804	1,307,932	44.01	3,525,362	1,592,362	45.16
	1,130,235	717,684	63.49	5,471,855	1,319,301	23.92	6,602,090	2,036,985	30.85
Exports & Imports									
Colombia (West Coast Ports Only)	262,855	114,228	43.35	89	—	—	262,944	114,228	43.06
Ecuador	143,799	84,295	51.68	153,906	11,369	7.38	297,705	95,664	32.10
Peru	519,550	436,523	84.01	2,377,556	—	—	2,897,106	436,523	15.10
Chile	733,829	375,361	52.65	3,167,791	1,307,932	41.64	3,901,620	1,683,293	43.14
	1,660,033	1,010,407	60.85	5,699,342	1,319,301	23.13	7,359,375	2,329,708	31.66

Notes:

1. Imports-Exports from and to Bolivia are included in the Peru-Chile Figures.
2. Tonnage shown is "Dry" Cargo only except in so far as carried in tanks of carriers whose main characteristic is "Dry" Cargo.
3. Tonnage excludes all shipments valued under $500.00.
4. Not included are shipments of the Dept. of Defense (M. A. T. S.).

[fol. 5416]

ANNEX 51D

U. S. ATLANTIC COAST IMPORTS AND EXPORTS TO WEST COAST OF SOUTH AMERICA

1958

All Tons of 2,000 lbs.

Source: Bureau of the Census

	Regular Carriers			Irregular Carriers			Regular and Irregular Carriers Combined		
	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %	Total Tons	U. S. Flag Tons	U. S. Flag %
Exports									
Colombia (West Coast Ports Only)	89,683	39,599	44.15	52	—	—	89,735	39,599	44.12
Ecuador	41,011	8,215	20.03	10,564	—	—	51,575	8,215	15.89
Peru	147,591	121,386	82.24	16,836	—	—	164,427	121,386	73.82
Chile	151,464	75,443	49.81	192,339	—	—	343,803	75,443	21.93
	429,749	244,643	56.93	219,791	—	—	649,540	244,643	37.66
Imports									
Colombia (West Coast Ports Only)	166,998	74,563	44.65	13,220	—	—	180,218	74,563	41.37
Ecuador	123,748	92,857	75.04	92,530	—	—	216,278	92,857	42.93
Peru	282,801	135,174	73.95	1,571,099	—	—	1,753,900	135,174	7.13
Chile	581,780	291,981	50.19	3,453,555	949,592	27.50	4,035,335	1,241,573	38.26
	1,055,327	594,575	56.34	5,130,404	949,592	18.50	6,185,731	1,544,167	24.96
Imports & Exports									
Colombia (West Coast Ports Only)	256,681	114,162	44.48	13,272	—	—	269,953	114,162	42.28
Ecuador	164,759	101,072	61.34	103,094	—	—	267,853	101,072	33.47
Peru	330,392	256,560	77.63	1,587,935	—	—	1,918,327	256,560	13.37
Chile	733,244	367,424	50.10	3,645,894	949,592	26.04	4,379,138	1,317,016	30.07
	1,485,076	839,218	56.51	5,350,195	949,592	17.74	6,835,271	1,788,810	26.17

Notes:

1. Imports-Exports from and to Bolivia are included in the Peru-Chile Figures.
2. Tonnage shown is "Dry" Cargo only except in so far as carried in tanks of carriers whose main characteristic is "Dry" Cargo.
3. Tonnage excludes all shipments valued under $500.00.
4. Not included are shipments of the Dept. of Defense (M. A. T. S.).

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Q. And, in drafting that charter, you merely copied the purposes in substance from the previous charter; is that right?

A. Yes, I think so.

Q. That is, the previous charter of the Peruvian company.

A. That is right.

Q. At the time when that charter was drafted were there any discussions as to whether the scope of the operations of Panagra were to be other than those actually set forth in the charter?

A. Not that I can recall, no.

Q. When is the first time that you ever heard of Pan American's theory that the original agreement, a part of which is founded upon the letter of August 31, 1928, restricted the operations of Pan American Grace in so far as territory is concerned?

A. Mr. Reynolds, I think that was sometime in 1938 but I couldn't place it exactly.

Q. You have no recollection of ever having heard it before?

A. No.

Q. Not in connection with any other extensions, Mr. Cogswell?

A. No.

[fol. 5424] pp. 3324-3325

Q. Mr. Cogswell, have you had a check made recently, by employees of the Grace Line, as to the amount of gold shipments from Ecuador?

A. I had a check made as to the gold shipments for the years 1935, 1936, 1937, and 1938.

Q. Can you tell me the total amount of the gold shipments from Ecuador on the Grace Line for those years?

A. Do you mean—

Q. (Interposing) In terms of revenue.

A. In 1935, carried 7,369 pounds, Revenue $21,144.52. 1936, carried 2,783 pounds; revenue $9,470.28. In 1937 and 1938 there were no gold shipments from Ecuador to New York on the Grace Line.

Q. For the purpose of comparison, could you give us the total Grace Line revenue leaving out mail subsidy for those years?

A. You mean Grace Line revenue on this route between New York and west coast of South America?

Q. The entire—

A. (Interposing) I haven't the figures. I have the figures for the operation from New York to Valparaiso and return.

Q. All right. Let's have it on this route, then.

A. In round figures, in 1935, leaving out mail pay, four million dollars; 1936, the same; 1937—

Mr. Cahill: There were no shipments in 1937.

[fol. 5425] pp. 3417-3418

Mr. Cahill: * * * I wanted to pick up a figure that was mentioned yesterday.

Examiner Brown: Thank you, Mr. Roig.

(Witness excused.)

Mr. Cahill: At Page 3325. The question I put begins, "All right, let's have it on this route then." It is in the middle of the page. Has everybody found it? The answer reads:

"In round figures, in 1935, leaving out mail pay, four million dollars."

The correct figure there should have been $7,334,244.37.

1936, instead of reading the same, should read $8,116,942.61.

Is that correct, Mr. Cogswell?

Mr. Cogswell: Yes, sir.

pp. 3325-3326

By Mr. Knauer:

Q. I would like to show you P-165, copy of a letter from Mr. Whitney to Mr. Iglehart dated November 19, 1938.

A. I see it.

Q. Can you tell me whether that letter is the first occasion on which you ever saw any statement or identification

A. Not to my recollection.

Q. And when you were called upon to draft this letter, and did, was it your purpose to limit the scope of the new company to an operation—

Mr. Friendly (interposing) I object to that, as to what its purpose was. We have gone considerably farther than would ever be permitted in a court as to what he drafted, but I submit that putting in what the purpose is is going beyond the bounds even in an administrative proceeding.

Mr. Reynolds: I would agree with Mr. Friendly's viewpoint if these two parties were able to agree as to the meaning of the very letter itself, but their argument indicates an ambiguity which is perfectly proper to explain by inquiring into the circumstances surrounding the drafting of the document itself.

Mr. Friendly: Well, it is perfectly well settled that, where there is ambiguity, while you can go into the background, which has been done by everybody at some length, although I think not to the extent that was just done by [fol. 5421] Mr. Reynolds in his preceding questions, that you can not ask the writer of a document to state what he meant by it, or what his purpose was in drawing it as he did. The document speaks for itself.

Mr. Reynolds: Except that this document does not speak clearly, and I am not asking as to what he meant: I am asking as to his purpose. It is an entirely different thing.

Examiner Brown: I don't see the difference though, Mr. Reynolds.

Mr. Friendly: I don't see any difference. If he had a purpose different from what the words said, and didn't express them, that is not binding on anyone else.

By Mr. Reynolds:

Q. Mr. Cogswell, after you drafted this letter, with whom did you clear it, or to whom did you show it?

A. I have no specific recollection, but I certainly showed it to Mr. Roig, and I may have shown it to Mr. Garni, and I think I showed it to Mr. J. P. Grace.

Q. I assume that they all agreed to its being sent in this form?

A. Oh, yes.

pp. 3311-3313

Q. Mr. Cogswell, you drafted the charter for the Peruvian Corporation, as I understand it, as set forth in Exhibit G-405; is that correct?

A. I drafted it or it was done under my supervision, yes.

[fol. 5422] Q. And with whom did you consult after having prepared the draft?

A. I have no distinct recollection on that point, Mr. Reynolds.

Q. Do you know whether it was submitted to Mr. Trippe or any of the gentlemen of the Pan American organization?

A. I have no recollection either in the affirmative or the negative. In other words I don't remember doing it and I don't remember not doing it.

Q. Well, do you remember from what source if any you took the statement of purposes set forth in that charter?

A. I think I probably took the statement of purposes from the charter of some airline.

Q. But you have no direct recollection on that; is that right?

A. Well, I know that Mr. Morris sent me, at Mr. Trippe's request, the charter of a Delaware corporation known as the Buffalo Central Airlines, I think it was, and I had that, and then I sent that back, and I think I may have used that as a guide.

Q. And was there a meeting of the representatives of the two owners to approve the charter before the actual process of obtaining a certificate of incorporation was undertaken?

A. I have no recollection that there was, and I have no recollection that there wasn't.

Q. Now, when you drafted that charter, I suppose you have no recollection as to whether there was any discussion as to the territory in which the company was to operate; is that right?

[fol. 5423] A. I don't recall any.

Q. When you drafted the charter for—

First, I assume it is understood that you also drafted the charter for the original Panagra corporation also.

A. That is right.

ANNEX 51E

U. S. FLAG PARTICIPATION IN MOVEMENT OF DRY CARGO BY SEA BETWEEN U. S. ATLANTIC COAST AND WEST COAST SOUTH AMERICA

	1955	1956	1957	1958
Exports				
Regular Carriers	46.02	47.03	55.25	56.93
Irregular Carriers	5.03	5.14	—	—
Regular and Irregular Carriers	34.73	34.38	38.66	37.66
Imports				
Regular Carriers	60.16	62.24	63.49	56.34
Irregular Carriers	42.78	27.98	23.92	18.50
Regular and Irregular Carriers	46.70	34.48	30.85	24.96
Exports & Imports				
Regular Carriers	55.54	56.36	60.85	56.51
Irregular Carriers	40.78	26.61	23.13	17.71
Regular and Irregular Carriers	45.07	34.29	31.66	26.17

Note: This chart is a summary of Annexes 51A-51D.

[fol. 5419]

W. R. Grace and Company Exhibit 169

Excerpts from Testimony of
William F. Cogswell in
C.A.B. Docket 779

pp. 3306-3308

Direct examination.

By Mr. Reynolds:

Q. Mr. Cogswell, if you will turn to Page 46 of P-34 the letter of August 31, 1928.

A. Yes, I have it.

Q. You will note, as this letter is reproduced in exhibit form, it does not indicate who signed it, other than the title of assistant secretary. This letter was signed by you was it?

A. That is right.

Q. And were you a party to the discussions which led up to the propositions set forth in this letter, Mr. Cogswell?

A. Not most of them. I was in on some of the discussions but not most of the discussions, no.

Q. How did you happen to be selected to write the letter?

A. Well, just as a lawyer, I guess.

Q. At the request of whom?

A. I don't remember. Someone in our office. Perhaps Mr. Roig, perhaps Mr. Garni.

Q. Mr. Iglehart?

A. I rather doubt it.

[fol. 5420] Q. At the time when you drafted this letter had you had discussions with anyone in which you learned it was the intention of either Grace or Pan American to restrict the operations of the proposed new venture in such a manner that they would never go elsewhere than between the Panama Canal and Valparaiso, Chile?

A. No.

Q. Were there any discussions, regarding the subject of confining the company's operations, of any nature, Mr. Cogswell?

from the Pan American directors of Panagra or from Pan American as to a limitation on the scope of Panagra's operations based on its original inception?

A. Yes, to the best of my recollection.

[fol. 5426]

W. R. Grace and Company Exhibit 170

Testimony of R. H. Patchin in
CAB Docket 779

pp. 3050-3055

By Mr. Cahill:

* * * * * * *

Q. Will you tell us the position you occupied with W. R. Grace & Company in 1927?

A. I was a manager of W. R. Grace & Company.

Q. At that time were you interested in the development of air transportation?

A. I became interested in it in that year.

Q. What was your interest at that time?

A. Well, I felt that the flight of Colonel Lindbergh across the Atlantic established aviation as transportation.

Q. And what did you feel in regard to W. R. Grace & Company?

A. W. R. Grace & Company had always been interested in transportation. I felt it would be an excellent line of activity for the company, a splendid thing for the development of the South American Countries with which we were doing business and in which we were doing business.

Q. After Colonel Lindbergh's flight which occurred as I recall in May, 1927, did you commence investigations into the prospects of air transportation in South America?

A. I did.

Q. What did you do?

[fol. 5427] A. I may say first I sought to familiarize myself with the progress of aviation in this country and the fundamentals of it. I then went to work on its application to transportation to Latin America. I interviewed manufacturers of planes, pilots, officials of the—

Mr. Friendly: I would like to have these names as we go along, Mr. Examiner.

A. Well, I got in touch with the Curtis Company, which I think had not yet been combined with Curtis-Wright, and with the Ford people who were—I don't recall whether the Ford tri-motored plane had yet been developed, but it was in the course of development. I talked with the officials of the Guggenheim Foundation which had been established for the encouragement of commercial aviation. I discussed the matter with the Assistant Secretaries of Navy and Commerce. I think Assistant Secretary of the Navy for Air at that time was Colonel Clarence Young. Also with some naval officers who were fliers whose names I do not recall at the moment. Generally I sought to inform myself as fully as possible.

By Mr. Cahill:

Q. Did you talk with any Congressmen?

A. Yes. I talked with some of the people in Congress. I talked with the—I don't remember whether this was immediately in 1927 or not, but subsequently with members of the Post Office Subcommittee of the House Appropriations Committee. I talked with Colonel Lindbergh very soon after his return from his flight. I talked several times with him. He was very kind and gave me information that I wanted.

[fol. 5428] Q. How about diplomats with the South American countries?

A. In the course of my studies I talked to various ones who were then representing their Governments of the countries on the west coast of South America.

Q. How about the managers of the various Grace Houses on the west coast?

A. The managers of the various Grace Houses, as they came to New York from time to time, I discussed the matter with them, and with those resident in New York having charge of our west coast Houses.

Q. Did you discuss the possibility of air transportation in South America with any administrative officials of the United States Government?

A. Mr. Hoyt was a partner of Hayden-Stone and Company of New York City.

Q. Did you meet Mr. Hoyt prior to the formation of The Aviation Company of the Americas, which was formed in June 1928?

A. Yes. I met him in May.

Q. How did you happen to come into contact with Mr. Hoyt?

A. Well, in the course of my affairs about aviation and the study on the subject, I heard that he was very much interested, very active. There were a number of companies in the aviation situation stirring up the development of the business.

I heard of him, was told by persons of his activity, and I called him up one day and went over and called upon him.

Q. I show you a memorandum dated May 23, 1938, entitled "Memorandum for Mr. Iglehart", relating to a conversation had by you with Mr. Hoyt.

[fol. 5432] Mr. Cahill: I ask that this be given a number for identification.

Examiner Brown: It will be marked for identification G-143.

(The document referred to was marked for identification as Exhibit G-143.)

By Mr. Cahill:

Q. I ask you whether G-143 accurately sets forth the substance of your conversation with Mr. Hoyt related therein.

A. I believe it does; yes, sir.

Q. This memorandum was made practically contemporaneously with the conversation with Mr. Hoyt, was it not, Mr. Patchin?

A. Yes, sir.

Q. Will you tell us how many conversations you had with Mr. Hoyt between May and August of 1928?

A. I can not recall the number, but there were several where I talked with him in his office, and I believe he came over and called on some of my associates in Grace and Company. I used to meet him occasionally outside.

Q. What did Mr. Hoyt indicate about his plans, in those conversations?

A. Well, he told me, in a very general way, immediately, what is set forth in the memorandum here.

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Q. I press the question: Is there anything else you can tell us about what Mr. Hoyt indicated as to his plans in these conversations?

[fol. 5433] A. Well, he said that this company—that he had understood the post office was going to advertise service from Cuba to Colon, and that the company with which he is associated, or whatever the exact corporate form at that time was—I think he was chairman of Pan American Airways—Corp. or Inc.—I don't remember the distinction—and that they were going to seek the contract to the Canal, and I think he also said to Puerto Rico and elsewhere.

Q. Did Mr. Hoyt speak of the date of commencing operations on this service from Panama Canal to Puerto Rico?

Mr. Friendly: From the Panama Canal to Puerto Rico?

The Witness: No.

Mr. Cahill: Two separate services: on the services to Panama Canal and to Puerto Rico.

A. I do not recall specific mention of the dates, but I think that those routes had been advertised about this time for, I believe, Pan American got the contract to the Canal in July, and I think it was well understood that the Post office Department was going shortly to begin extension of foreign airmail routes in the areas indicated at first.

By Mr. Cahill:

Q. Was Mr. Trippe present—

Examiner Brown (interposing): Was that an answer to your question?

Mr. Cahill: I take it that it is an answer to the best of the witness' recollection.

A. Yes. A foreign airmail act had been passed, I believe, in 1927, and I discussed the matter with the Post Office Department.

Q. With whom did you talk there?

A. With the then Postmaster General, Mr. Harry New, the Second Assistant Postmaster General, Mr. W. Irving Glover, who had immediate charge of foreign mails, and foreign airmail, and Mr. White, who was Chief of the Foreign Mails Division, Post Office Department.

Q. Did you talk to officers of the State and Commerce Departments?

A. Yes. The Department of Commerce had an Aeronautical Branch. I talked to them.

Q. Did you talk to Dwight Morrow?

[fol. 5429] Q. Mr. Dwight Morrow had been Chairman of the Government Commission which sat in the controversy arising from the efforts of General William Mitchel to awaken greater military interest in aviation, and I believe, as I recall it, that that commission made certain recommendations which related to the development of military, naval, and civil aviation policy, and Mr. Morrow was, I thought, quite well informed on Government policy and aviation, generally.

Q. Did you talk to the then Secretary of Commerce?

A. Mr. Hoover was Secretary of Commerce, and I discussed the matter with him.

Q. Did you have any surveys made as to the possibilities of air transportation on the west coast?

A. In 1927 we retained the services of an Aeronautical engineer named Archibald Black. He was of the firm of Bigelow and Black or Black and Bigelow, since dissolved, I believe, and he at my request prepared a report on the feasibility of air transport on the west coast of South America, figures based on the cost of equipment and distances to be flown.

Q. Do you have a copy of Mr. Black's reports?

A. No. Mr. Black's report I have been unable to find in recent years. I don't know where it is, and he had no copy. I communicated with him and he said that he retained no copy of it personally, and when his firm went

out of business a great many of their old records had been destroyed.

Q. The employment of Black was about July, 1927, was [fol. 5430] it not?

A. Yes.

Q. Did you obtain reports from any other air transports?

A. Yes; in the following year, during late 1927 or early in 1928, the United States Army sent an air squadron clear around Latin America on what was, I believe, called a good will flight, or the Army-Pan American flight, and I think it consisted of five or six planes—amphibians, I believe—and was commanded by Major Herbert A. Dargue of the Air Force or Air Corps, as I believe it was then called, and I met Major Dargue in Washington, looked him up, as a person who probably knew more about the flying conditions in South America and Latin America, generally, than anyone else, and had many conversations with him about the feasibility of American aviation down there, and finally asked him to prepare a report for us elaborating such a project from all available information and his own experience in flying down there.

Q. When was General Dargue's report, which you have told us about, made?

A. Well, as I say, I had conversations with him in the spring of 1927 and finally in May of that year asked him to make the report and he submitted it in July.

Mr. Friendly: Did you mean '27, Mr. Patchin?

The Witness: The second time, just how?

Mr. Friendly: Yes.

The Witness: No, I did not. It was '28. Thank you.

[fol. 5431] pp. 3059-3066

By Mr. Cahill:

Q. Mr. Patchin, when did you first meet Mr. Richard F. Hoyt?

A. In May 1928—no, I met Mr. Hoyt a year or so previously, but not in any relation to aviation.

Q. What position did Mr. Hoyt occupy at the time, Mr. Patchin?

[fol. 5437] pp. 3074-3084

By Mr. Cahill:

* * * * * * *

Q. Now, you testified that you first met Mr. Trippe, as you recalled, about August 1, 1928. Did Mr. Trippe at any time indicate that the proposed joint company could not operate via the interior of Colombia?

A. No. I do not recall that he made any such statement.

Q. Now, Mr. Trippe has testified, Mr. Patchin, in this proceeding, that Grace & Company did not exercise its option to take up 50 percent of the stock of the air company to be formed until about February 19, 1929. I would like to ask you a few questions as to what happened between the letter of August 31, 1928, and February 1, 1929. My first question is: Is it not a fact that during the organization of Peruvian Airways, Grace & Company took an active part in the management and development of that company?

A. That is true.

Q. Now, is it not a fact that when additional funds were needed by that company—and I refer to Peruvian Airways, Grace & Company and Aviation Corporation of the Americas each advanced $25,000 to Peruvian Airways?

A. Yes.

Q. Is it not a fact that there was some discussion that the operations of the service would be carried on in Chile by a separate corporation?

A. Yes.

[fol. 5438] Q. And to meet this eventuality, was not the Chilean Airways Corporation formed in December, 1928?

A. It was.

Q. And I ask you: did not W. R. Grace & Company and Pan American Airways each subscribe and pay $25,000 in cash for the stock of that company?

A. Yes.

Q. Now, I ask you if it is not the fact that in January, 1929, a corporation was formed in Delaware known as South American Airways Corporation, with a capital of a million dollars?

A. What date was that?

Q. January 25, 1929.

Mr. Friendly: Will you give us the exact date, Mr. Cahill? I think it is there in the record.

(Discussion had off the record.)

A. Yes.

By Mr. Cahill:

Q. Will you tell us who drew the charter of this corporation?

A. Mr. Cogswell.

Q. And who attended to the filing of it?

A. Mr. Cogswell.

Q. Do you know whether Mr. Cogswell consulted with representatives of Aviation Corporation of the Americas in reference to the formation of South American Airways Corporation?

A. I believe he did.

. . . . . .

[fol. 5439] Examiner Brown: Let's have the record show that Mr. Cogswell has advised that his conversation was with Mr. Trippe.

By Mr. Cahill:

Q. Now, the contract for F.A.M. 9, the record shows was advertised on January 31, 1929. Subsequently on February 21, 1929, the name of South American Airways Corporation was changed to Pan American-Grace Airways, Inc., was it not?

A. Yes.

Q. And the organization meeting of that corporation was held on the same date, namely, February 21, 1929, was it not?

A. Yes.

Q. And at that meeting subscriptions were reported from Aviation Corporation of the Americas and W. R. Grace & Company, each in the amount of $500,009?

A. Yes.

Q. Now, Mr. Patchin, can you tell us whether or not Aviation Corporation of the Americas knew long before

[fol. 5434] By Mr. Cahill:

Q. Do you have any further recollection as to whether anything was said by Mr. Hoyt as to when his company could commence operations on the services to the Canal and Puerto Rico?

A. No, except that he intended to move in on them very shortly.

Q. Now, I ask you: was Mr. Trippe a party to these early conversations between Mr. Hoyt and yourself that you have described to us here?

A. I did not meet Mr. Trippe until somewhat later. The exact date of that meeting I do not recall.

Q. Up to the time that Mr. Trippe and you met—and I want to make that a cut-off point at this time—tell us, up to that time what was the situation between—

Mr. Friendly (interposing): I would like to have a date on that, Mr. Cahill. Can we have a date fixed?

Mr. Cahill: All right.

By Mr. Cahill:

Q. Will you fix for us, if you can, the date when you met Mr. Trippe?

A. I would not remember. I recall that he put it at about August 1 in his testimony, and I think that was probably correct.

Examiner Brown: August 1, 1928?

The Witness: 1928. I think that is probably correct, Mr. Examiner.

[fol. 5435] By Mr. Cahill:

Q. Assuming it was August 1, 1928, the date when you met Mr. Trippe, tell us: up to that time what was the situation between Mr. Hoyt and his group and W. R. Grace and Company?

A. Well, the discusion ran to whether they could work together, whether it would be desirable to associate for the development of aviation in South America.

Q. What point had you reached in these discussions just before you met Mr. Trippe?

A. Well, I think we had had a pretty fair meeting of minds that it was desirable and that we both wished to do it.

Mr. Hoyt had stated initially that he wished to do it, and it seemed to us desirable.

Q. Those preliminary arrangements of which you speak —did those preliminary arrangements contemplate the formation of a corporation to carry through the plans, Mr. Patchin?

A. I think so, yes, as well as I can recall it.

Q. And that corporation was, by name, if you recall—?

A. Do you want me to stay on the other side of August 1?

Q. Yes.

A. I don't recall that any name was given to the corporation or any details perfected regarding it.

Q. At the time of your discussions with Mr. Hoyt in the summer of 1928, was the postoffice considering a route from the Canal to Valparaiso?

[fol. 5436] A. Yes. There were indications that it would at some time advertise a foreign airmail route beyond the Canal.

Q. I would like to show you Exhibit P-147. I want you to look at it.

Do you remember the meeting with Colonel Harris which Colonel Harris reports in P-147?

A. I do not remember this luncheon meeting. I remember meeting Mr. Harris in our offices and elsewhere, but I do not have any specific recollection of this luncheon meeting.

Q. Have you any recollection of discussing with Col. Harris the subject of passenger service?

A. Yes. That was a part of our discussions, of course.

Q. Did you at any time express any reluctance to engage in passenger service by air?

A. No. Not when the preparations had been completed so that it was safe.

Q. What did you say in regard to your feelings about safety?

A. We naturally wished not to undertake any operation that would be a hazard to travelers in the countries where we were operating.

February 21, 1929, that W. R. Grace & Company was going into this enterprise on a 50-50 basis?

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The Witness: I was taking it for granted that we were going along on a 50-50 basis.

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Examiner Brown: Can't you be more definite than that? Who knew and how did they know?

[fol. 5440] The Witness: Well, we had subscribed equally in the companies that had been formed initially, and in supplying additional capital to one of them when it was required, and we certainly had that idea on our side and I think there was no concealment of it although there was no direct commitment at that time.

Examiner Brown: Your statement was based on an understanding from past facts rather than any direct recollections?

The Witness: My statement is based on a general recollection of the state of mind on both sides at that time so far as it was apparent to me.

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Q. Now, will you tell us why it was that the Board of Directors of Grace & Company did not act until February 20, 1929?

• • • • • • •

A. The action was taken at a regular meeting of the Board of Directors, and it is the practice very frequently in the company for action to be taken with the knowledge of the directors, without there having been formal action by the Board of Directors. In W. R. Grace & Company the directors—many of the directors are active executives and all are very close to the management, and frequently action is taken, commitments made which are subsequently acted upon by the Board of Directors.

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[fol. 5441] Q. Mr. Patchin, do you have any knowledge of the manner in which Panagra obtained a concession from the Argentine Government?

A. Yes.

Q. Will you tell us what you know about that?

A. Pan American had a representative there on his way to Argentina early in the year 1929, and late, I believe, in 1928 I had suggested to Mr. Hoyt in the course of discussion of carrying this operation to Argentina, that Dr. Vincente Lopez, a prominent lawyer of Argentina, who had recently ceased to hold an important legal or fiscal position in the Government, and who had been retained—who had previously acted for W. R. Grace & Company in other business in Argentina, would be by reason of his influence and his ability, an excellent person for us to retain to obtain operating rights in Argentina, and early—some time in 1929 he was engaged for that purpose, and my recollection is that he was extremely effective in getting for us operating rights into Argentina before we bid on the mail contracts.

Q. In your opinion was he the man most responsible for obtaining this concession?

A. In my opinion, he was.

Q. Was Mr. Lopez employed as a result of the suggestion set out in your letter which has been marked G-99? I will show you G-99. (Handing to the witness)

A. Yes.

Q. Your answer to my question is yes?

A. Yes.

[fol. 5442] Q. And Mr. Lopez thereupon commenced negotiations with the Argentine Government?

A. Yes.

Q. Now, what was the situation in the Argentine at this time?

A. Well, at this time an American company called Trimotors Safety Airways had an operation of sorts in Argentina and was seeking to get a monopolistic concession.

Q. Did that company subsequently become Nyrba?

A. Yes. That is my understanding.

Mr. Friendly: Could we have the date of this fixed a little better, Mr. Cahill? Is this the early winter of 1929?

Mr. Cahill: Will you fix the date, Mr. Patchin?

The Witness: Yes. Early—I think January or February of that year. I think that Tri-motors Safety evolved—by what steps I do not know—into Nyrba.

By Mr. Cahill:

Q. This Tri-motor Safety Airways had a headstart in the Argentine in this matter, did it not?

A. Yes.

Q. And was it en route toward getting an exclusive concession?

A. We feared that it was and were so advised at the time.

Q. And what did Dr. Lopez do in that connection?

A. He prevented their getting a monopolistic concession.

Q. Did you and Mr. Trippe collaborate in drawing a telegram of instructions to Dr. Lopez?

[fol. 5443] A. I think at that time we did collaborate—my recollection is we collaborated on instructions to him.

Q. Did you play any part in the obtaining of concessions for Panagra in other South American countries, particularly Colombia?

A. Well, in the situation obtaining at the end of 1928 and early in 1929 I studied that situation, I talked to the State Department about it, Mr. Francis White, who was Assistant Secretary of State, and other officials of the State Department, I went on two occasions to see Dr. Olaya Herrera, and I sought to cooperate with Mr. Trippe wherever I could in the effort to pave the way for operating rights for American companies through Colombia.

Q. Who was Dr. Herrera?

A. Dr. Olaya Herrera at that time was the Colombian Minister to Washington, subsequently President.

Q. Will you continue your answer?

A. Colombian Minister in Washington, and subsequently President of Colombia.

Q. Now, will you tell us the instructions which W. R. Grace & Company gave to the Grace Agencies in South America in connection with their proposed representation of Panagra?

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A. We talked constantly. We had our managers from the West Coast of South America coming here very frequently, and we talked to them at all times and kept them posted when they were here orally on the situation.

[fol. 5444] Q. Now, will you tell us what the instructions were?

A. The instructions were to cooperate in every possible way in making this enterprise successful, Grace having been designated as the traffic agent, to assist in the negotiation of Governmental relations and every possible way.

[fol. 5445] pp. 3094-3095

Q. Just a couple of final questions.

At the time of any of the extensions of the Panagra route, did Mr. Trippe or any of the representatives of Pan American state that Panagra's capital was dedicated to a venture limited to the Canal Zone-Valparaiso route?

A. No.

Q. Was there ever any question of a waiver or liberalization of this so-called dedication of capital in connection with any of these extensions?

A. No.

Q. Was there ever any agreement, to your knowledge, by any representative of Grace that Panagra would not extend north of the Canal Zone?

A. No, sir.

Q. Now, Mr. Patchin, in connection with these extensions of routes of Panagra, can you tell us whether the Grace directors or the Pan American directors were more active in pushing these extensions?

Examiner Brown: What extensions, Mr. Cahill?

Mr. Cahill: The various extensions of Panagra's route.

Examiner Brown: That have taken place, you mean?

Mr. Cahill: Yes.

A. I believe—my recollection is very distinct that in all cases the initiative, the effort, and the final stages of accomplishment of these concessions were accomplished chiefly as a result of the work of the Grace directors.

[fol. 5446] Q. Did you use the word "concessions"?

A. I meant "extensions". In some cases those involve, of course, the obtaining of operating rights, sometimes loosely called concessions.

[fol. 5447] pp. 3095-3099

Cross examination.

By Mr. Friendly:

Q. Mr. Patchin, can you fix the date of the conversations with the manufacturers and Government officials which you testified this morning any more definitely than you have done up to this time in the early years?

A. In 1927—no, I cannot, Mr. Friendly, from memory.

Q. How do you fix them as being in 1927 rather than in 1928?

A. Because I started—I began to work on this thing early in the summer of 1927, and I worked continuously and those were among the first things that I did.

Q. I think you said that you were able to fix the date of your talk with the Post Office officials as being after the enactment of the foreign airmail act; is that right?

A. Well, I didn't recall, as I was speaking, just the date of that, Mr. Friendly.

Q. Was your talk with them after the Act had been passed?

A. No. I think it began very soon after my interest began, because there was talk about foreign airmail. I would be glad to be refreshed as to the date of the airmail Act.

Q. Well, the date of the Act was March 8, 1928.

Mr. Reynolds: That is the second Act?

[fol. 5448] Mr. Friendly: No. That is the first Act. The first Foreign Airmail Act.

The Witness: 1928?

Mr. Friendly: Yes.

The Witness: Then, I was mistaken, Mr. Friendly. It was before that, but at that time there were limited airmail operations, I suppose, on a poundage basis.

By Mr. Friendly:

Q. Now, in 1928 the Grace Line received its financial assistance from the Government in the form of mail pay, did it not?

A. Yes. They got a mail contract—ocean mail contract.

Q. And you were concerned, were you not, that aviation might have some effect on these ocean mail contracts?

A. My recollection is that the ocean mail contracts ran for a period of 10 years?

Q. When was the contract to expire?

A. I think the contract was obtained in 1928.

Q. New contract?

A. New contracts, yes.

Q. Isn't it a fact that at the outset your interest in aviation so far as the west coast of South America was concerned was primarily in the mail feature of it?

A. No, sir. I foresaw, with many others, that it would become real full-fledged transportation, not only of mail but of persons.

Q. I would like to ask you a few questions about your talk with Mr. Hoyt on May 23, 1928. Do you have a copy of G-143 before you?

[fol. 5449] A. Yes, I have it.

Q. I want to refer to the statement in the second paragraph: "It is his understanding that the Post Office Department will soon advertise for bids for mail service from Cuba to Colon via Central America and later will advertise for bids on a mail contract from Colon to Valparaiso," and then consider in connection with that the sentence at the bottom of the page: "He said that he recognized that we were in an advantageous position which was the reason why he hoped we could cooperate with the Pan American Airways, but that if we were disposed to go ahead on our own, he would be inclined to stand aside," and so forth. Now, is it your testimony that this offer to stand aside applied to the Cuba-Colon route or to the route farther south or to both?

A. I think it applied more particularly to the west coast of South America.

Q. I think you testified this morning that Mr. Hoyt told you either at this talk or shortly thereafter that Pan American was planning to move right in on the route to the Canal, had he not?

A. I think he left me with that impression. How definite that was, I don't know. I notice it isn't mentioned here, but that was implied, at least.

Q. Did you, on behalf of Grace & Company, express any interest in this Cuba-Colon route?

A. No, we did not.

Q. Now, I noticed that your letter to General Dargue which is G-140 is written on the same day as your memo-
[fol. 5450] randum to Mr. Iglehart relating your conversation with Mr. Hoyt. Is that purely a coincidence or was one the result of the other?

Mr. Cahill: May we have that read, please?

(The question was read by the reporter.)

A. No. I had discussed the matter previously—of making a report for us previously—with Major Dargue and this was simply confirmation of that.

By Mr. Friendly:

Q. I don't suppose you can remember whether you wrote the letter to Major Dargue before you had your talk with Mr. Hoyt or not, can you?

A. I do not remember.

Q. Now, it did come to your attention, did it not, that this route from Cuba to the Canal or, rather, as it turned out, a route from the United States to the Canal, which Mr. Hoyt told you about, was advertised on May 31, 1928?

A. Yes.

Q. You knew that that had been issued, did you not?

A. The advertisement was issued on the 31st day of May?

Q. Yes.

A. Did I know it when?

Q. Did you know it shortly thereafter?

A. I am sure I did.

Q. Did W. R. Grace & Company consider submitting a bid on that route?

A. No.

[fol. 5451] Q. Did you have any discussions about it at all within the Grace organization?

A. We may have had. I do not recall at the present time.

[fol. 5452] pp. 3122-3132

Cross examination.

By Mr. Harlan:

Q. Mr. Patchin, at the time of your conversation with Mr. Hoyt, which is reflected in the memorandum marked Exhibit G-143, was it your understanding that Pan American was planning to make a similar arrangement with the other steamship companies mentioned to that which eventually was made with W. R. Grace and Company?

A. Mr. Hoyt stated that he intended to approach them, and I assumed that he had already done so, as he was a director, I believe AGWI and had some relationship to Colombia Steamship Company.

Q. Do you know if they planned to have an equal partnership with these steamship companies?

A. I do not know.

Q. Was that the original proposal made to W. R. Grace and Company?

A. I don't recall just which side the proposal emanated from, or what time the 50-50 idea came under active discussion.

I feel quite sure that at no time did we wish to be a minority stockholder in an important enterprise at this time.

Q. You don't remember any time that Pan American suggested that you have less than a 50 percent stock ownership in the new airline?

A. No.

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[fol. 5453] Cross examination.

By Mr. Wanner:

Q. Mr. Patchin, in the early part of your testimony you spoke of conversations with quite a number of people—Colonel Lindbergh and Mr. Hoover, and others. Did that all take place in 1927, or also in the early part of 1928?

A. I think it took place in—well, in the summer of 1927 and then continuously on until we got into this enterprise.

Q. Could you place it as all taking place before your discussion with Mr. Hoyt?

A. All discussion with everybody—all kinds of people?

Q. That is right.

A. No. It was continuous even after that. We continued very actively after the conversations went on.

Q. Would you say that a substantial portion of those conversations took place before your discussions with Mr. Hoyt?

A. Yes, I would say a substantial portion, but not necessarily—I don't know what percentage that would be. It would be a very difficult thing to say. The thing intensified as we went along.

Q. Do you know whether you spoke to the Postoffice officials before that time?

A. Before discussion with Mr. Hoyt?

Q. That is right.

A. Oh, yes.

[fol. 5454] Q. How about the Department of Commerce officials, Mr. Patchin?

A. I don't remember at just what point I went to talk to the Department of Commerce, but I am quite sure before I talked to Mr. Hoyt I talked to everybody in Washington that I thought had any relationship to this question of developing air transport service to South America.

Q. Are you able to recall whether those discussions with the people in Washington, as you call them, took place after you had been in touch with the manufacturers and the Guggenheim foundation?

A. I think they were, more or less contemporaneous. I spent a good deal of time in Washington.

Q. Would you place your discussions with the State Department at about the same time with your discussions with Postoffice and Commerce?

A. I should think so, yes. I had occasion to go to the State Department on other business, and I was pretty well steamed up on this whole question. I think I talked to everybody who was willing to listen to me, and some who were not.

Q. Incidentally, if you don't recall on some of these questions, just say so.

A. Yes, sir.

Q. I am probing some rather ancient memory.

Now, in connection with the employ of Archibald Black, I think you said he was an aeronautical engineer; is that correct?

[fol. 5455] A. Yes, sir.

Q. I take it that the survey he made was an aeronautical survey and not commercial; is that correct, Mr. Patchin?

A. As I recall it—unfortunately I haven't the report it was an estimate of costs of operation rather than revenue.

Q. That is your best recollection?

A. Yes.

Q. Were you able to place the date of that at all, Mr. Patchin?

A. Yes. I think we had the date as July 1927.

Q. '27 or '28?

A. '27. Maybe later. It was during that summer.

Q. How much earlier had you requested the report; do you recall that?

A. I think a month or six weeks, or something like that.

Mr. Archibald Black was an author of a book, I think entitled "Air Transport," which was rather widely read at that time.

Q. At that time, from the time you were talking to officials in Washington and hiring Archibald Black, did you personally have in mind going into partnership or combination with any other interest for the west coast service?

A. I don't recall any detailed partnership suggestion at that time, or ideas. I thought that it was entirely practicable for us to attempt it ourselves.

[fol. 5456] Q. By "ourselves" you mean W. R. Grace and Company, Mr. Patchin?

A. Grace and Company, with due preparation.

Examiner Brown: The plans hadn't reached any tangible state at that time?

The Witness: No, they had not.

Examiner Brown: Very tentative arrangement, I take it? I mean, probing into the possibilities of air transportation, which was in its infancy at that time.

The Witness: Going into the matter very carefully, sir.

By Mr. Wanner:

Q. Coming up to the time of your discussions with Mr. Hoyt, and referring to G-143: As I understand it, that memorandum—

• • • • • • •

A. Yes, sir.

Q. Do you recall whether it took place on that day, or possibly a day or two before?

A. I am sure—I am reasonably sure that it took place on this day or the day before. I am sure that I wrote the memorandum very promptly after the conversation.

Q. Did you arrange with his office to go to his office and meet him?

A. My recollection is that I called him up and I told him I heard he was interested in aviation in the international field, and so was I, and I would like to have a talk with him.

[fol. 5457] Q. You arranged the meeting?

A. That is my recollection.

Q. You initiated it?

A. My recollection seems to be supported by the fact that it says that he had intended to approach us.

Q. Referring to that sentence, the first sentence of the second paragraph, did his statement in that connection indicate to you that he had in mind financial participation of W. R. Grace and Company?

A. Not entirely.

Q. You say "not entirely"?

A. No, I don't think so. I don't think it was just that.

Q. Did it include financial participation?

A. Well, I suppose so, yes.

Q. You don't know definitely, though?

A. Why, yes. He had said that they were obliged to raise some capital.

Q. Pardon me?

A. The memo says that they were obliged to raise some capital—over on the next page. It says they would require people to come in.

Q. Do you recall whether he had the intention of obtaining financial participation from the other steamship companies mentioned in the first paragraph?

The words used in the memorandum there are "participation and cooperation".

A. I don't know what his detailed plans were with regard to them, further than it may be indicated in the memo.

[fol. 5457a] Q. Now, referring to the last sentence on the first page of G-43, beginning, "He said that he recognized we were in an advantageous position" and so forth, and then continuing over, "He stated that he would be inclined to stand aside and not compete if Grace is disposed to go ahead."

At that time did you indicate whether Grace would go ahead on its own?

A. I do not recall. We certainly intended to get into aviation.

Q. You were not able to make any commitment at that time, however, or take any position on whether you would go ahead on your own?

A. There wasn't any discussion of that.

Q. Do you recall when it was decided to take an equal participation in the Peruvian company?

A. Sometime between the time of my first meeting with Mr. Hoyt and the time the Peruvian corporation was organized, I should think, maybe along the latter part of July or August.

I should think maybe some time in July, but that is a conjecture at this distance.

Q. Would it be very shortly before the letter of August 31 was written?

A. Could my recollection be refreshed as to when the Peruvian corporation was organized?

Mr. Friendly: September 6, I think.

The Witness: September 6, yes.

By Mr. Wanner:

Q. You will recall, however, that the August 31 letter provided for each company furnishing $25,000; is that right?

[fol. 5458] A. Yes, that is right. It was sometime in August, I should say, probably—maybe in July.

Q. Referring to the second page of G-143, the first complete paragraph on that page refers to the Huff Daland Dusters outfit.

Did you know, before your meeting with Mr. Hoyt, that Huff Daland was a subsidiary of Keystone, or in any way related to Mr. Hoyt?

A. I don't remember now. I think I might. I have heard of their activities in Peru, but I don't recall specifically.

Q. Did you know that Colonel Harris was with the Huff Daland Dusters at that time—1928?

A. I don't believe I had met Colonel Harris up to that time, and I don't know that I had identified him with that—in 1928, I mean.

Q. You wouldn't be able to state, then, whether your knowledge of the Huff Daland activities was one of the things that sent you to Mr. Hoyt—that induced you to go to him?

A. It may have been. We knew of Huff Daland in Peru, of course.

Q. But you didn't know it was a Hoyt company, or related to Hoyt?

A. I do not know at what time I learned that fact, Mr. Wanner.

Q. Do you recall who it was that sent you to Mr. Hoyt? Did any particular person have anything to do with it?

[fol. 5459] A. I think I heard from several persons, and I think he was in the newspapers in connection with the aviation news from time to time, too, and I think Mr. Guggenheim, or somebody of the Guggenheim Foundation, may have mentioned his interest to me.

* * * * * * *

Q. It is your best recollection that he knew of your interest at the time of your May 23, 1928, meeting?

A. That would be my recollection, yes.

Q. And that he so stated at that time?

A. Well, I think so, yes.

Q. Now, coming to a somewhat later period, between the time of the formation of the Peruvian company and the decision of Grace to exercise its option: did any of the Pan American officials—Mr. Trippe or Mr. Hoyt or Mr.

Whitney—to your knowledge attempt to get a commitment from the Grace people as to whether the option would be exercised?

That is, were they urging that a decision be taken on the exercise of the option, to the best of your recollection?

A. That is, when we moved into the formation of a larger company?

Q. That is correct.

A. I think that there was some suggestion from Mr. Trippe and Mr. Cogswell that, if Pan American didn't want to take a—if Pan American-Grace—it was not then Pan American-Grace--

[fol. 5460] Q. If Grace did not want to?

A. If Grace did not wish to take a substantial interest in the company to be formed, if one was formed, for the purpose of bidding, that they would prefer to operate it as Pan American Airways.

Whether that was intended as pressure for a commitment I do not know.

Q. Well, if I may refresh your recollection a little on that: That was part of a series of letters written on August 31 and immediately thereafter.

Now, during the succeeding months did Pan American try to have Grace make up its mind as to whether that option would be exercised?

A. I think we had pretty well made up our minds on the subject and wished to go ahead on that basis, and I do not recall of any particular pressure, and the need was not apparent, because the progress of the situation had not opened up where there could be an operation at that time.

[fol. 5461]

W. R. Grace and Company Exhibit 171

Testimony of Mr. Roig in
CAB Docket 779

pp. 771-2

By Mr. Cahill:

Q. Coming back to Colombia again: you have told us of Pan American's purchase of an important interest in Scadta. Scadta, you have told us, was originated as a German company in Colombia; is that not true?

A. That is my understanding, yes, it was organized by a man by the name of von Bauer. He was either German or Austrian.

Q. Even after Pan American's stock purchase, did Scadta continue to be operated under German management?

A. Yes, up until the outbreak of the present war.

Q. Scadta operated local services in Colombia, did it not?

A. Yes.

Q. Now, is it your testimony that Pan American did not want Panagra to enter Colombia?

A. That is what we were told at the time.

Q. And by whom?

A. By Mr. Trippe and others.

Q. Now, if Panagra could be tied to a flying boat operation, Panagra would not be enabled to enter Colombia; is [fol. 5462] that true?

A. That is correct. We would have been confined to the coast—Buenaventura, Tumaco.

[fol. 5463] pp. 931-34

By Mr. Friendly:

Q. Now, it is a fact, is it not, that as early as 1940, you were concerned over the possibility of some other airline applying for a certificate to operate from the Canal down the West Coast?

A. I have been concerned about that a good many times. I wouldn't say that as early as 1940 was any too early.

Q. You are concerned about it now, I take it?

A. Very much.

Q. You recall, do you not, that in the fall of 1940 American Export Airlines had filed an application for the New Orleans-Canal Zone?

A. Yes, I recall it, and that recalls what you probably have in mind. I stated at that time, and I felt very clearly, that if they obtained that and got as far as Balboa, there would be considerable danger of their proceeding further south, and any operation operating south of Balboa is not unlikely to follow the Panagra route.

Q. Now, W. R. Grace & Company never filed any application for New Orleans-Canal route in accordance with the regulations of the Civil Aeronautics Board, did it?

[fol. 5464] A. That is correct.

Q. Did you have any further discussions as to filing such an application?

A. Among ourselves, you mean?

Q. Among yourselves, yes.

A. Well, either before or around the time of this application, we organized the Gulf and Caribbean Airways, with the idea of using that company in this connection. It subsequently developed that owing to the situation which arose—already existed, as a matter of fact, and became increasingly worse—it was impossible for any new company to obtain equipment at that time of any kind suitable for such an operation.

[fol. 5465] pp. 1003-04

Examiner Brown: Before you leave that subject, Mr. Friendly, I would like to ask one question on this R.C.A. matter:

Mr. Roig, in the event the local agency refused to or failed to sign, was that the end of the matter? You say that an R.C.A. required the signature of a number of individuals. Were those R.C.A.'s forwarded to New York if the local agency failed to sign or did the matter stop there?

A. Oh, it did not stop there by any manner of means. If any of the different people who were to sign were unwilling to sign, the matter then became one of discussion,

and I would decide it. I can't at the moment recall a single case of that kind.

Examiner Brown: I was just wondering.

The Witness: That would be what would happen.

Examiner Brown: All right, Mr. Friendly.

By Mr. Friendly:

Q. How would that work in the period before you were president, if you know?

A. Mr. MacGregor would have decided it at that time. He was the general manager.

Q. He would have had to take it up with the Grace people in New York, would he not?

[fol. 5466] A. He would probably have discussed it with me. He wouldn't have had to, as far as I know.

[fol. 5467] pp. 1021-22

By Mr. Gambrell:

Q. You spoke a minute ago of the dissatisfaction of depending on Pan American connections to the United States because Pan American had other interests to serve. Would you say that by a parity of reason it could be said that the Grace people should not be in control because their handling of the services of Panagra and the outlets to the United States would be largely influenced and restricted by considerations of the numerous other Grace interests in Latin America?

A. I would not only not say that, but the latter part of it I would most vigorously deny.

Q. Is it not true that when a passenger is sold transportation over Panagra, he thereby loses his potential as a possible passenger on Grace Line down the West Coast of South America?

A. I don't think so. I am not interested in potentials. I am interested in actuals. Panagra is carrying today as many passengers in a month as the Grace Line carried when it was operating in a year, and I think any theory that an air passenger is necessarily lost to a surface line presents a very meager and naive view of the future of air trans-

portation. Not only the future but the present and the past. [fol. 5468] Air transportation has not been developed that way abroad. It has created most of the traffic which it carries. The traffic which it carries was never a potential for the steamers.

[fol. 5469] pp. 1045-46

Q. *Isn't the Grace Line Steamship operation the* principal passenger operation on the West Coast?

A. It is not. In normal times— Now, there again you are coming to this question of principal. That would involve adding up steamers and adding up accommodations, and all that sort of thing, but in normal times, between the Canal Zone and Chile, where Panagra operates and where the Grace Line operates, there are many other steamship lines engaged in business, and without seeing the figures—I think we have a gentleman here who will give them—I am not prepared to say who has the most tonnage, but W. R. Grace and Company does not carry even half of the passengers or cargo in that area.

[fol. 5470] pp. 1073-74

By Mr. Gambrell:

Q. Mr. Campbell yesterday or the day before testified as to the possibility of an interchange of equipment between Pan American and Panagra at certain times. In your opinion, would an arrangement, under Board Authority, whereby Panagra would operate its equipment on Pan American's route between Canal Zone and Florida, solve the difficulties you have spoken of?

A. It would not solve it.

Q. Could you say why?

A. When you speak of a traffic exchange agreement between Panagra and Pan American, I necessarily think of the form of such agreement which Pan American prepared and submitted to us and not of some imaginary agreement that I know nothing about. That particular agreement, as I explained yesterday, would not accomplish any of the objectives that we are interested in, other than the mere objective of making it possible for passengers to come through to the United States on perhaps the same plane.

Even that, however, would involve Pan American's operation of their plane over portions of the Panagra route which I do not consider advisable. It would not, as drawn, have permitted bringing Panagra's crews through to the [fol. 5471] United States. It would not give Panagra any bases in the United States with all of the advantages and benefits flowing from that which Mr. Campbell and others have described.

[fol. 5472] pp. 1075

Q. May I ask if there has been any filing of the agreement of January 4, 1939, with respect to the management of the company and providing service—that is, since the effective date of the law?

A. You mean January 4, 1939?

Mr. Gambrell: February 14.

A. February 14?

By Mr. Gambrell:

Q. Yes.

A. That agreement was discussed with the Board. To the best of my knowledge, it was not filed because counsel and the Board's counsel with whom it was discussed did not consider that it came within the filing requirement. To the best of my knowledge, since the passage of the Civil Aeronautics Act, all agreements required to be filed under the law have been filed.

[fol. 5473] pp. 1144-45

By Mr. Reynolds:

Q. And various occasions where you have had the equipment interchange proposals, even the early ones as well as the more recent one, it again has been true that Pan American wanted to operate the planes themselves on the Panagra route; is that not true?

A. That is true. We have felt that there have been a number of instances of that kind, where, if their proposals had been followed, Panagra would have ceased to become

an independent company in any real sense at all, it would have become a division of the Pan American Airways.

Q. Is it correct to state that a major portion of your controversies have involved that element of Pan American, on the one hand, wishing to operate for Panagra and Grace, on the other hand, endeavoring not to permit it?

A. Well, in a broad way, I have always felt that our controversies could be grouped under the heading of "Panagra Independence," "Route Extensions," an "Publicity," and under the first heading, "Panagra Independence," fall a very considerable number of matters, some of which you have referred to.

[fol. 5474] p. 1160

Q. Do you recall, Mr. Roig, any instance in which Mr. Trippe has taken the position—or Pan American has taken the position—that Panagra was prevented from operating to or from a certain place or in a certain manner, because of an agreement which Pan American had entered into with some other company or with some other Government?

[fol. 5475] pp. 1163-64

Q. Pan American also insisted that if Panagra be allowed to go into Cali, it also be understood that Panagra would keep out of the Caribbean area, did it not?

A. There was an attempt made at that time and I think again in connection with a proposed Scadta extension to Cali, certain draft agreements prepared by Pan American were submitted which contained clauses which were intended to prohibit Panagra and Grace from entering the Caribbean, and we also refused to enter into any agreement containing any such provision.

Q. Were those agreements so drafted that one of the advantages accruing to Panagra would be the operation into Cali, or is this entirely something different?

A. No. I don't recall any particular agreement of that sort in connection with Cali. I do remember, in connection with Quito, I think, in the proposal that Scadta should go to Quito, I remember some written agreements were made at that time, and I remember after a certain draft had been

made and then submitted to Pan American, it came back with this Caribbean idea in it which, as I recall, had not been discussed up to that point. The discussions were related to quite different matters.

[fol. 5476] Q. The result of your discussions was that no such agreement was ever signed, I take it?

A. Oh, yes. We declined to sign any such agreement.

Q. In connection with none of these arrangements have you agreed that Panagra would actually keep out of the Caribbean?

A. No.

[fol. 5477] pp. 1172-73

By Mr. Reynolds:

Q. Mr. Roig, to what extent do the needs of the East Coast service enter into the setting of the rate for the West Coast service?

Mr. Cahill: If at all? There has been no foundation for it.

Mr. Reynolds: If at all. Apparently there has been an understanding on it, and I just want to know what factors have been brought into play thereby.

A. I don't know to what extent the East Coast factors may have influenced Pan American. They have not influenced Panagra's decision as to the rate except that it may have occurred to us that, in the early days—to some extent now—that on a mileage basis the West Coast rate might be lower, but it is a well-known fact in transportation that mileage is not always by any means the determining factor and no matter how low we made the rate on the West Coast Pan American could have made an equal or lower rate on the East Coast, regardless of mileage.

By Mr. Reynolds:

Q. In your rate-making procedure has Pan American never suggested that a certain rate would have to be [fol. 5478] higher, or couldn't come down because they just couldn't meet it on the East Coast?

A. I don't recall any such issue having actually been reached in any of my discussions.

[fol. 5479] p. 1303

By Mr. Cahill:

Q. Do you recall, Mr. Roig, any complaint by Pan American prior to the present proceeding that the Grace Line or W. R. Grace & Company was taking any action prejudicial to the best interests of Panagra?

A. I do not.

[fol. 5480]

W. R. Grace and Company Exhibit 172

Testimony of Mr. Sinclair in
CAB Docket 779

pp. 2576-2578
2599-2600

By Mr. Cahill:

Q. Now, you know that Pan American Airways handled all Panagra traffic in the United States, do you not, Mr. Sinclair?

A. Yes.

Q. And has done so from the very beginning, has it not?

A. To the best of my knowledge.

• • • • • • • •

Q. Do you know any one man in Pan American, in all your years of experience in this traffic work—do you know of any one Pan American man who has devoted all his time to Panagra traffic in the United States?

A. No, I personally don't.

Q. You told us about this ticket counter in the Canal Zone. I want to ask you: Did the Panagra people on that counter ever try to steal Grace line customers for Panagra?

• • • • • • •

A. After the incidents occurred I myself tried to do so, yes.

[fol. 5481] By Mr. Cahill:

Q. Did you ever hear that Panagra people were instructed by the managers of Grace agencies to go on to the decks of the Grace Line steamers and endeavor to sell the Grace Line passengers tickets on Panagra?

The Witness: I didn't get that question very clearly.

Examiner Brown: Read the question.

(Whereupon the pending question, as above recorded, was read by the reporter.)

A. No, I never heard that.

By Mr. Cahill:

Q. Did you ever know that Pan American Grace representatives went aboard the Grace Line steamers with the consent of the Grace managers, to sell Grace Line passengers tickets on Panagra?

A. No. It is news to me. I went on board myself the Grace Line steamers. It was the latter part of my service, but that is news to me that they had instructions to do so.

Q. What were you doing on board the Grace Line steamers on these occasions?

A. Well, they were pleasant steamers. We used to go on board to have dinner sometimes, get a little party together, [fol. 5482] meet a number of friends there. I personally, I can assure you that I never solicited business. Not that I had no desire to solicit business. I used to send a man on board for that purpose.

Q. To solicit business for Panagra?

A. To solicit business for Panagra. I would like to add something to that. I would like to clarify that: that my man invariably worked through the purser of the Grace liners.

I mean, he didn't go up and contact passengers indiscriminately. He invariably worked through an employee of the steamer.

• • • • • • •

By Mr. Reynolds:

Q. When you were in the Canal Zone and had a man soliciting traffic on board ship—

A. That is right.

Q. I believe you testified that you had instructed such a man to do that.

A. That is right.

• • • • • • • •

[fol. 5483] Q. Did they [Grace] know that you were sending that man, or those men, or whatever it is, aboard ship to solicit traffic?

A. I don't believe I ever made it known to them.

Q. How did you happen to send him? Was it your own idea?

A. No. They had been doing that before I arrived in the Canal Zone.

Mr. George P. Smith had been sending a boy by the name of Korval aboard all steamers, not only the Grace liner, but all steamers.

[fol. 5484]

W. R. Grace and Company Exhibit 173

Testimony of Mr. Trippe in
CAB Docket 779

pp. 1515-1517

By Mr. Friendly:

Q. When did you first hear of a proposal—and by "you" I mean you personally—that W. R. Grace & Company might take an interest in the company that was to operate under the Peruvian concession?

A. I did not hear of it until around August, 1928.

Q. How did you hear of it?

A. Mr. Hoyt told the officers of Pan American that he had conversations with Mr. Iglehart, and I think Mr. Patchin of the Grace Company, whereby the Grace Company might acquire up to a 50 percent interest in our route from the Canal Zone down the west coast of South America.

• • • • • • • •

Q. Did you see Colonel Harris again at about this time?

A. Yes. Colonel Harris had come to New York for discussions with us as to the steps to be taken in setting up the operations in Peru. At about this time Colonel Harris informed me that at Mr. Hoyt's suggestion he had met with certain officers of the Grace Company.

Q. Did Colonel Harris give you this information in writing or orally?

A. In writing and also orally.

[fol. 5485] Mr. Friendly: I would like to have marked for identification a memorandum dated August 1, 1928, from Colonel Harris to Mr. Trippe.

Examiner Brown: The document will be marked for identification Exhibit P-147.

(The document referred to was marked Exhibit No. P-147 for identification.)

By Mr. Friendly:

Q. Is the memorandum which has been marked for identification as P-147 the writing to which you have just referred?

A. It is.

Q. What position did you take with respect to the making of arrangements with Grace & Company?

• • • • • • •

A. I had certain misgivings, particularly Colonel Hamilton, our vice president, and I had misgivings about the steamship angle. However, we considered that Mr. Hoyt was pretty well committed and that there was really no point in debating the pros and cons.

[fol. 5486] pp. 1558-1559

By Mr. Friendly:

Q. What is your recollection as to whether it was the existence of the Grace Line that led Pan American to be interested in W. R. Grace & Company? How did you regard the matter?

A. I looked upon Grace & Company as a whole. While, as I have said, we considered Pan American was committed before I came into the matter, I felt the only real advantage to us was the participation of a company with many connections in the west coast countries of South America where the line was to operate, and with a chain of established agencies which had close contacts with most of the west coast countries. Also they were acting for the steamship line, but certainly I did not feel that the conduct of a competitive steamship was an advantage.

Q. Do you consider that the participation of W. R. Grace & Company has had advantages for Pan American Grace Airways?

A. Of course, I do. I do not want my testimony to be construed at all as meaning that Pan American-Grace has not benefitted in some important ways from the participation of Grace & Company, particularly, the ability of men such as Mr. Grace, Mr. Iglehart, Mr. Garni, and Mr. Roig.

[fol. 5487] pp. 1621-1625:

By Mr. Friendly:

• • • • • • •

Q. What reasons led Pan American to enter into the agreement of February 14, 1939?

A. We had tried every other compromise without success. We knew that because of Mr. MacGregor's desire to retire a new issue would shortly arise in an attempt to secure an independent president. It seemed best in the interests of avoiding a stalemate that we accept the Grace suggestion on management in return for their agreement that the issue of the extension was not to be raised again except on the finding of an arbitrator that our connecting service was inadequate. We were, of course, also mindful of the ill effects of a public quarrel between the two principal American flag transportation systems in Latin America, ours in the air and Grace on the water.

• • • • • • • •

Q. When did Grace next bring up the proposal that Pan American-Grace extend to the United States?

A. In the fall of 1940.

Q. What reason did they give for bringing up the matter at that time?

[fol. 5488] A. The reason given was the application which had been filed by American Export Airlines for a certificate between New Orleans and the Canal Zone. They said they were afraid that American Export would get this route as against Pan American, and would then find that the New Orleans-Canal Zone route did not offer sufficient traffic in and of itself, and would probably seek to extend its lines down the west coast in competition with Pan American-Grace.

Q. In connection with this request by Grace, was any complaint made concerning the connecting service of Pan American between Miami and the Canal?

A. Not to my knowledge.

Q. Was any claim made by that time of breach by Pan American of the February, 1939, agreement?

A. No.

Q. What happened when the proposal was made?

A. We told the Grace people that we could see no reason for departing from our agreement of 1939 and that we were not impressed by the reasons which they had advanced.

Q. Was the proposal dropped?

A. We heard nothing further about it for some months.

Q. When did Grace again bring up this matter of extending Pan American-Grace north from the Canal?

[fol. 5489] A. They brought it up again in the spring of 1941.

Q. What reason did they give for bringing it up again at that time?

A. It was again the New Orleans issue, which was now about to be heard.

Q. Were there further discussions of the matter during the spring of 1941?

A. Yes, there were, largely with Mr. Rihl.

Q. Was there any change in Pan American's position?

A. No. Not at all.

[fol. 5490] pp. 1714-1716

By Mr. Friendly:

Q. Do you recall the various proposals that were made in regard to Pan American-Grace's operations into Bolivia?

A. Yes. The question of operating through Bolivia was discussed in the very early days when there was difficulty in making arrangements in Chile.

Although Bolivia was not on the route mentioned in the letter of August 31, 1928, it had been mentioned along with the Argentine in my original memorandum, and we agreed that the company's territory might be broadened to include Bolivia, which we considered to be definitely a west coast country, although not actually on the sea coast.

What was under discussion at this time was not a shuttle service but diverting the whole route to Buenos Aires through Bolivia if the Chilean situation could not be handled.

We rather favored this idea and had Mr. Rihl go to Bolivia to explore the situation.

However, the Chilean matter was subsequently worked out and the Bolivian proposal was dropped.

I have no recollection that the question of operating into Bolivia was raised by Pan American-Grace again for some time.

[fol. 5491] Q. Do you recall being told, around 1934, that an opportunity had presented itself for Pan American-Grace to establish a shuttle service from Tacna to LaPaz?

A. I recall the incident, although not the precise dates.

Q. What was Pan American's position?

A. We had some doubt about it, simply on the business side.

La Paz was a high altitude airport, something over 13,000 feet, and with existing equipment only a small pay load could be available, particularly on westbound flights. Pan American was not sold on the operation as a business proposition with the equipment then available, and without United States mail pay.

Q. Did Pan American later agree to the inauguration of the Tacna-LaPaz service?

A. Yes, we subsequently did, suggesting amendments to the proposed franchise that were included.

[fol. 5492] pp. 1878-1879

By Mr. Cahill:

• • • • • • •

Q. Mr. Trippe, everything is important, and I am asking you for your present recollection, I am not asking you for something you can get up, but that is all you can remember at this time. Isn't it true that the development of the Panagra line as well as the development of the Pan American line is a pioneering venture?

A. Yes, I believe that would be a proper statement.

[fol. 5493] pp. 1946-1951

By Mr. Cahill:

• • • • • • •

Q. Now at that time Mr. Hoyt was controlling the Aviation Corporation of the Americas, was he not?

A. I wouldn't say he controlled it. I would say the Board of Directors controlled it.

Q. Mr. Hoyt was a very important person in the Aviation Corporation of the Americas, was he not?

A. He was our chairman.

Q. And that corporation was a holding company for Pan American at the time, was it not?

A. In the late summer of '28—

Q. (Interposing) '28?

A. (Continuing) —I believe it was, yes.

Q. Mr. Hoyt was a director of the Atlantic Gulf West Indies Steamship Company, was he not?

A. Yes, he was.

Q. And his father-in-law's family, the Stone family, of Hayden Stone were in control of that steamship line, were they not?

A. I wouldn't know that.

[fol. 5494] Q. Have you any recollection of that?

A. No, I have none.

• • • • • • •

Q. Now, the Madison Steamship Line owned 27,500 shares of Pan American, did it not?

A. It did own some time ago.

Q. Yes.

A. Whether they still own them or not, I am not sure.

Q. The United States Line, another 27,000 shares, did they not? In Pan American?

A. That is correct. A small percentage.

Q. What you say that they did some time ago, that means at the time you filed an exhibit as to the stockholders in Pan American in this case; isn't that true?

A. With respect to the Matson Company?

Q. With respect to both the directorship of W. H. Standley in Electric Boat, and with respect to the ownership of Matson and with respect to the ownership of United States Steamship, all in Pan American.

A. What date would that be, Mr. Counsel, so I could get it?

Q. I don't know, Mr. Trippe. Your counsel can probably give it to you.

[fol. 5495] (Discussion had off the record.)

Mr. Friendly: The end of 1942 or thereabouts.

By Mr. Cahill:

Q. Do you know of any change in the stockholdings of these two steamship companies, the United States Lines since the date of this exhibit?

A. No, not that I know of.

Q. Or Matson?

A. Yes, I have heard that Matson had disposed of part of their shares.

Q. Do you know that to be a fact?

A. I just heard that.

Q. Just rumor?

A. Yes, I would say it is just rumor.

Q. These two companies, on the basis of your exhibits in this case, are among the few top stockholders in Pan American, are they not, these two steamship companies, calling to your best recollection?

A. Yes. I believe I did say that. I would be glad to elaborate on that and show you just what assistance these—

Q. (interposing) I am just asking you for the fact, Mr. Trippe.

[fol. 5504] A. (continuing)—other international airlines received from the steamship companies.

Q. I am just asking you for the fact, whether you so testified.

A. The steamship companies were not interested—

[fol. 5505]

W. R. Grace and Company Exhibit 174

Growth in Air Traffic between the United States and South America (Including Canal Zone)

1961 (First 6)	141,600	air travelers
1962 (First 6)	[illegible]	air travelers
[illegible] (First 6)	12,655	air travelers

Sources

1. Cherington testimony (Tr. 616).
2. PS-[illegible].

DEFENDANTS

EXHIBIT

MAY [illegible] 1969

5505

A. What would you mean by "few top stockholders," within the top three or four?

Q. I am asking you, Mr. Trippe.

A. No, I wouldn't say they were among the three or four top stockholders.

[fol. 5496] Q. I am not asking you about three or four. Aren't they among the most substantial stockholders of Pan American?

A. They own, or did at that time, some two or three percent of the stock of the company.

Q. Will you please answer my question? Are they among —these two steamship companies—the largest stockholders that Pan American has?

A. They are not the largest stockholders.

Q. Are they among the largest, I asked you.

A. No, I would not say they are among the largest.

Q. Would you put them among the first 10?

A. Yes, I would put them in among the first 10.

Q. In the first 10 of the largest stockholders of Pan American?

A. Yes.

Q. And that is the first 10 out of 9,000, if I understood your testimony the other day. You told us you had 9,000 stockholders?

A. We have over 9,000.

Q. Now, speaking of the holdings of Mr. Hoyt, you said, didn't you, that you didn't think he was in control of the Aviation Corporation of the America?

[fol. 5497] Do you know what stock Mr. Hoyt owned in the Aviation Corporation in 1928?

A. No, I don't have any figure in mind.

Q. Do you know what stock the Stone family owned in the Aviation Corporation at that time?

A. No, I don't.

Q. Didn't the Hayden Stone group have a substantial interest in the Aviation Corporation in 1928?

A. Yes, they had a substantial interest, but certainly not a control interest, according to my recollection.

[fol. 5498] pp. 2280-2283

By Mr. Wanner:

• • • • • • •

Q. Now, you testified that you did not learn of the negotiations relating to the participation of Grace in the west coast service until about the first of August, 1928. Do you recall that?

A. Yes, I believe that was my testimony.

Q. Did you say that you learned of that from Colonel Harris?

A. Well, I recall a discussion with Colonel Harris whom I think had also had some meeting with the Grace officials at the time. Whether I heard it first from Colonel Harris or Mr. Hoyt, I don't know, but I don't recall knowing anything about the discussions prior to that time.

Q. Don't you recall learning it from Colonel Harris at the time he was in New York at the end of July, negotiating in part for the purchase of Fairchilds for the Peruvian operation?

Mr. Friendly: July, 1938?

Mr. Wanner: That is right.

A. No. I don't recall that.

[fol. 5499] By Mr. Wanner:

Q. You don't remember that?

A. No.

Q. When you did learn of the negotiations, you learned did you not, that they had actually been going on for some time prior to the date that you found out about it?

A. Yes, I believe I heard—

Q. Do you know how much prior to that time they had been going on?

A. No, I don't know.

Q. Who was Mr. Atkins in Mr. Hoyt's organization?

A. Is that Mr. Robert Atkins you refer to?

Q. I believe so, yes.

A. I think he was an associate of Mr. Hoyt in Mr. Hoyt's firm. Whether he was a partner in Hayden Stone or not, I don't know.

Q. You had quite a number of dealings with him in the spring and summer of 1928 in connection with the west coast negotiations, did you not? Do you recall that?

A. Yes, I do.

Q. Didn't he call to your attention the fact that Mr. Harris had advised him that Mr. Patchin had been inquiring of the Post Office Department concerning a possible [fol. 5500] west coast service as early as April of 1928? That is, a west coast service by airplane?

A. No, that that I can recall.

Q. That doesn't refresh your recollection. You don't recall his mentioning that to you at any time?

A. Not at all.

Q. That was Mr. Atkins?

A. No, I don't recall at all.

Q. In the summer—do you recall in the summer and spring of 1928 participation of the Marconi Company or one of the Marconi Companies in the west coast service being considered?

A. I recall that the mail contract in Peru in some way brought the Marconi Company in the picture, and my recollection would be that the Marconi Company was a British organization that held the franchise for operating mail service in Peru.

Q. Yes, but I am not referring to that. I am referring to negotiations here in New York with respect to financial participation of that company in the west coast service similar to the participation of Grace.

A. No.

Q. You don't recall that?

A. No, I have never heard of any such move.

[fol. 5501] Q. The negotiations during that period were carried on primarily by Mr. Hoyt?

A. Yes, sir.

[fol. 5502] pp. 2727-2729

By Mr. Calfill:

Q. Do you recall, on a previous occasion, having been asked this question:

"Is any steamship company tied in with you?

"Mr. Trippe: Yes, sir; the United States lines operating transAtlantic service and the Matson Line operating trans-Pacific service."

Do you recall that question having been put and your having given that answer?

A. I may have. I don't know. Certainly both companies are associated with Pan American; that is true.

Q. Well, I refer you to your testimony before the Subcommittee on Appropriations, the House of Representatives, on the Postoffice Appropriation Bill for 1942, Pages 640 to 643 of the record.

Now, isn't it a fact that you testified at that time that Pan American received considerable advantage from the steamship companies that it was tied in with?

A. That is correct. We do receive certain advantages. I would be glad to outline those if you like.

Q. Now, at that time the help you thought you got primarily was the use of the steamship agencies abroad; isn't that true?

[fol. 5503] A. That was one form of assistance. Another was the fact that the steamships of these two lines were in a position to provide rescue service at sea in the event one of our clippers should go down.

In these early pioneering years that was a possibility we had very much before us, naturally, and we sought to do everything possible to see that appropriate assistance was rendered them in the event of such a contingency.

Q. Do you think it is necessary to have a stock interest in a steamship line to have that steamship line go to the assistance of an airplane that is in distress; is that the intendment of your testimony?

A. No. The intent of my testimony was that the financial arrangements that would relate to the action were fully covered. That arrangement we felt was very much to the interests of Pan American Airways.

Q. Isn't it the fact that before the Senate you said that the use of these agencies abroad enabled you to follow the precedents of the German, British, and French international airlines systems?

[fol. 5506]

W. R. Grace and Company Exhibit 175

Growth in Revenue Passenger Miles on Pan American Miami-Balboa Sector

1945	20,928,000[1]
1952	42,880,000[2]
1957	68,284,000[3]

Sources

1. PS-9.
2. PS-116, p. 1, 3rd col. (sum of Pan American actual revenue passenger miles).
3. PS-116, p. 2, 3rd col. (sum of Pan American actual revenue passenger miles).

or PS-101 (difference between Pan American revenue passenger miles flown within South America and within South America plus Miami-Balboa sector, which is 68,743,000 revenue passenger miles. This figure is slightly larger than that derived from PS-116. The apparent reason for this is that some passengers fly over the Miami-Balboa sector to destinations other than those included in PS-116.)

DEFENDANT'S
EXHIBIT
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[fol. 5507]

W. R. Grace and Company Exhibit 176

Comparative "Density of Air Traffic Flow" - 1957 (Professor Cherington's Criterion PS-101)

	Revenue Passenger Miles Flown (000)	Route Miles Operated	Revenue Passenger Miles per Route Miles per Day
Foreign and Overseas Operation	5,391,027	103,563	142.6 [1]
Northwest (foreign and overseas)	259,806	13,283	53.6 [2]
Pan American (LAD)			
Within South America	143,442	5,517	7..2 [1]
South America plus Miami-Balboa Sector	212.185	6,683	87.0 [1]
Miami-Balboa Sector	68,743	1,166	161.5 [3]

Sources

1. PS-101.
2. CAB Monthly Report of Air Carrier Traffic Statistics, December, 1957.
3. Taking differences between Pan American figures given in PS-101 and applying Formula:

$$\frac{\text{Revenue passenger miles flown}}{\text{Route miles operated} \times 365}$$

DEFENDANT'S EXHIBIT U S Dist Court S D of N Y MAY 22 1959

[fol. 5508]

W. R. Grace and Company Exhibit 177

Increase in "Density of Air Traffic Flow" (Professor Cherington's Criterion PS-101) 1945-1957

Balboa-Miami Sector

	Revenue Passenger Miles Flown	Route Miles Operated	Revenue Passenger Miles per Route Miles per Day
1945	20,928,000 [1]	1,201 [2]	47.7 [3]
1957	68,743,000 [4]	1,166 [4]	161.5 [4]

Sources

1. PS-9.
2. PS-12 (1945 figure assumed to be the same as 1944 figure).
3. $\frac{20,928,000}{1201 \times 365}$
4. WRG-176.

DEFENDANT'S EXHIBIT U S Dist. Court S D of N Y MAY 22 1959

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[fol. 5509]

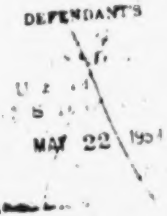
W. R. Grace and Company Exhibit 178

Growth of Average Passenger Load per Plane Mile Flown on Pan American's Miami-Balboa Sector (Mr. Ferguson's Criterion - PS-9)

	Plane Miles	Passenger Miles	Average Passenger Load
1945	1,188,771	20,9[illegible],000	17.6[1]
1957	1,739,000[2]	68,284,000[3]	39.3

Sources

1. PS-9.
2. PS-120 (increase in Panagra aircraft miles representing diversion to it of miles actually operated by Pan American in 1957.)
3. WRG-175.



[fol. 5510]

W. R. Grace and Company Exhibit 179

COMPARATIVE DEVELOPMENT OF AIR PASSENGER TRAFFIC BETWEEN THE U. S. AND SOUTH AMERICA AND BETWEEN THE U. S. AND OTHER MAJOR GEOGRAPHIC AREAS OF THE WORLD - BASED ON COMPARISON OF EXPORT AND IMPORT TRADE WITH THE UNITED STATES.

(Compare with Pan American Exhibit PS-106).

Area	Number of Passengers Fiscal year 1957 1/	Total Export-Import Trade 2/ Calendar year 1957 (00,000)	Passengers per hundred thousand dollars of trade
South America	272,055	$53,109.19	5.11
Europe	755,977	58,381.31	12.9
Australia and Asia	166,266	34,687.92	4.8

Notes:

1) Number of air passenger figures are taken from PS-[illegible].

2) Export-Import Trade figures are taken from the Statistical Abstract of the United States - 1[illegible], pp. 894-97. These figures are broken down on the following sheets.

DEFENDANT'S EXHIBIT U.S. D.C. S.D. MAY 22 [illegible]

5510

[fol. 5511]

A. TOTAL TRADE BETWEEN THE UNITED STATES AND SOUTH AMERICA

EXPORTS	
South America	$2,613,141,000
Panama, Republic	84,497,000
Canal Zone	21,077,000
Total	$2,718,715,000
IMPORTS	
South America	$2,573,345,000
Panama, Republic	24,303,000
Canal Zone	576,000
Total	$2,598,224,000
Total Exports	$2,718,695,000
Total Imports	2,598,224,000
Total Trade	$5,316,919,000

[fol. 5518]

PAN AMERICAN-GRACE AIRWAYS, INC. EXHIBIT 195

DIRECT SERVICE AVAILABLE BETWEEN VARIOUS CITIES WITHIN SOUTH AMERICA

Pan American-Grace Airways, Inc. Exhibit 195

APRIL 1959

BUENOS AIRES TO SANTIAGO

	PANAGRA	AEROLINEAS ARGENTINAS	ROYAL DUTCH AIRLINES (KLM)	LINEA AEREA NACIONAL (LAN)	SCANDINAVIAN AIRLINES SYSTEM (SAS)
Frequency (per week)			2	6	2
Elapsed Time (Hours) (3)	2:30/3:00	2:45	2:45	2:45	2:30
Equipment	DC-7B, DC-6B	DC-6	DC-7C	DC-6B	DC-7C
O.W. Fare (U.S.$), F.C./T.C.	67.00/55.00	- /55.00	- (1)	- /55.00	- (1)

SANTIAGO TO LIMA

	PANAGRA	CARRERAS PACIFIC AIRLINES (CPAL)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	LINEA AEREA NACIONAL (LAN)
Frequency (per week)	8	2	1	2
Elapsed Time (Hours) (3)	5:00/8:30	5:30	5:30	5:30
Equipment	DC-7B, DC-6B	DC-6B	DC-6	DC-6B
O.W. Fare (U.S.$), F.C./T.C.	165.00/126.00	165.00/126.00	70.00 (2)	- /126.00

LIMA TO GUAYAQUIL

	PANAGRA	BRANIFF	LINEAS AEREAS DE NICARAGUA (LANICA)	ROYAL DUTCH AIRLINES (KLM)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	AEROVIAS PANAMA AIRWAYS (APA)	AEROLINEAS PERUANAS (APSA)
Frequency (per week)	9	2	2	2	1	1	2
Elapsed Time (Hours) (3)	3:00/3:30	3:00	3:00	3:00	3:00	3:00	3:00
Equipment	DC-7B, DC-6B	DC-6	Viscount	Super Const.	DC-6	DC-6	DC-6
O.W. Fare (U.S.$), F.C./T.C.	98.00/75.00	98.00/75.00	60.00 (2)	- (1)	40.00 (2)	50.00 (2)	40.00 (2)

LIMA TO PANAMA

	PANAGRA	BRANIFF	AEROVIAS PANAMA AIRWAYS (APA)	COMPAÑIA ECUATORIANA DE AVIACION (CEA)	LINEA AEREA NACIONAL (LAN)
Frequency (per week)	14	5	1	1	2
Elapsed Time (Hours) (3)	5:00/9:00	7:00/9:30	6:30	9:00	6:30
Equipment	DC-7B, DC-6B	DC-7C, DC-6	DC-6	DC-6	DC-6B
O.W. Fare (U.S.$), F.C./T.C.	209.00/168.00	209.00/168.00	100.00 (2)	90.00 (2)	- (1)

Notes: (1) No fares shown
(2) Carrier offers one class service which combines first and tourist class features.
(3) Figures for Elapsed Time denote trips of shortest and longest duration.

Source: Official Airline Guide, World Wide Edition, April 1959.

[fol. 5514]

W. R. Grace and Company Exhibit 180

Comparative Operating Ratios
(Compare with PS - 107)

Year	Domestic Trunk Lines	U.S. Local Carriers (a)	Pan American (LAD)	Panagra	Braniff	PA, BO, BN Total
			Total Operating Revenues (000) (1)			
1956	1,262,881	6,505	88,039	20,005	7,530	115,582
1957	1,419,614	8,374	93,855	20,150	8,566	122,579
			Total Operating Expenses (000)			
1956	1,162,988	6,720	85,318	18,467	6,663	110,448
1957	1,377,516	8,406	95,779	19,444	7,808	123,.31
			Operating Ratio (%)			
1956	92.1	103.3	96.9	92.3	88.4	95.6
1957	97.0	100.4	102.0	96.5	92.1	100.6

(a) Group of five local service carriers including Southwest, Mohawk, Allegheny, Piedmont, North Central - from PS 102

(1) Including subsidy

Source: Civil Aeronautics Board, Quarterly Report of Air Carriers Financial Statistics, December 1957

DEFENDANT'S EXHIBIT
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[fol. 5515]

W. R. Grace and Company Exhibit 181

Comparative Rates of Return
(Compare with PX 1987)

Year	Net Profit (Loss) (000)	Average Total Investment (000)	Rate
		Pan American (Lat)	
1956	[illegible]	[illegible]	
1957	[illegible]	[illegible]	
		Panagra	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
		Braniff International	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
		Domestic Trunk Operations	
[illegible]	[illegible]	[illegible]	
1957	[illegible]		
		[illegible] Carriers	
1956	[illegible]	[illegible]	
1957	[illegible]	[illegible]	

Source: Civil Aeronautics Board, Quarterly Report of Air Carriers Financial Statistics.

[illegible]
EXHIBIT
U.S. [illegible]
B.D. [illegible]
MAY 22 63

5515

[fol. 5516]

W. R. GRACE AND COMPANY EXHIBIT 182

Comparison of Local and Through Traffic carried by Pan American over Miami-Nassau Sector - 1957

		Revenue passenger miles
Total Traffic	-	68,284,000 1/
Local Traffic	-	18,763,000 2/
Through Traffic	-	49,521,000

1/ PS - 116, total of figures on page 2, col. 3

2/ PS - 116, page 2, traffic on NAS-MIA segment

DEFENDANT'S EXHIBIT
U S DISTRICT COURT
S D OF FLA
MAY 22 1961

[fol. 5517]

PAN AMERICAN-GRACE AIRWAYS, INC. EXHIBIT 194

COMPETITIVE SERVICES AVAILABLE FROM VARIOUS CITIES IN SOUTH AMERICA TO THE UNITED STATES

APRIL 1959

BUENOS AIRES TO NEW YORK

	PANAGRA	BRANIFF	PAN AMERICAN	AEROLINEAS ARGENTINAS (1)	TRANSCONTINENTAL	AEROLINEAS PERUANAS (APSA) (2)	LINEA AEREA NACIONAL (LAN) (2)
Frequency (per week)	11	1	6	2	3	2	2
Elapsed Time (Hours) (6)	24:00/30:45	28:45	25:00/27:30	27:30/29:30	27:30	24:00	22:30
Equipment	DC-7B, DC-6B	DC-6	DC-7B	DC-6	Super H. Const.	DC-6	DC-6B
O.W. Fare (U.S.$), F.C./T.C.	556.70/461.50	556.70/461.50	556.70/461.50	- /351.20	- /458.00	251.00 (4)	- /288.00

BUENOS AIRES TO MIAMI

	PANAGRA	LINEA AEREA NACIONAL (LAN)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	CHILEAN AIRLINES (CHILE - PAA) (3)
Frequency (per week)	8	2	1	2
Elapsed Time (Hours) (6)	18:30/21:30	17:30	21:00	19:00
Equipment	DC-7B, DC-6A	DC-6B	DC-4	Constellation
O.W. Fare (U.S.$), F.C./T.C.	368.00/368.00	- /258.00	210.00 (4)	232.50 (4)

LIMA TO MIAMI

	PANAGRA	BRANIFF	AEROLINEAS PERUANAS (APSA)	LINEA AEREA NACIONAL (LAN)	AVIANCA	AEROVIAS PANAMA AIRWAYS (APA)	LINEAS AEREAS DE NICARAGUA (LANICA)
Frequency (per week)	14	3	8	2	3	1	2
Elapsed Time (Hours) (6)	10:00/10:30	10:00/11:00	12:00	12:00	17:00	14:00	12:00
Equipment	DC-7B, DC-6B	DC-7C, DC-6	DC-6	DC-6B	DC-4	DC-4	Viscount
O.W. Fare (U.S.$), F.C./T.C.	319.00/262.00	319.00/262.00	150.00 (4)	- /383.00	319.00/262.00	145.00 (4)	180.00 (4)

GUAYAQUIL TO MIAMI

	PANAGRA	BRANIFF	AEROLINEAS PERUANAS (APSA)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	CHILEAN AIRLINES (CHILE - PAA) (5)	LINEAS AEREAS DE NICARAGUA (LANICA)
Frequency (per week)	9	1	2	1	2	2
Elapsed Time (Hours) (6)	8:00/10:30	8:00	9:30	11:00	10:00	8:30
Equipment	DC-7B, DC-6B	DC-6	DC-6	DC-6	Constellation	Viscount
O.W. Fare (U.S.$), F.C./T.C.	234.00/194.00	234.00/194.00	110.00 (4)	110.00 (4)	122.50 (4)	158.00 (4)

PANAMA TO MIAMI

	PANAGRA	BRANIFF	LINEA AEREA NACIONAL (LAN)	COMPAÑIA SUDAMERICANA DE AVIACION (CSA)	CHILEAN AIRLINES (CHILE - PAA) (5)	AEROVIAS PANAMA AIRWAYS (APA)	LINEAS AEREAS CENTROAMERICANAS (LACSA)
Frequency (per week)	14	6	2	1	2	3	2
Elapsed Time (Hours) (6)	4:00/4:30	4:00	4:30	4:30	6:00	5:00/5:30	9:00
Equipment	DC-7B, DC-6B	DC-7C, DC-6	DC-6B	DC-6	Constellation	DC-6, DC-4	Convair 340
O.W. Fare (U.S.$), F.C./T.C.	110.00/94.00	110.00/94.00	- (3)	55.00 (4)	72.50 (4)	59.00 (4)	130.00/94.00

Notes: (1) Effective May 29, 1959 Aerolineas Argentinas will operate Comet-4 Jets to New York as follows: Frequency (per week) 3
Elapsed Time (Hours) 15:15
O.W. Fare (U.S.$) Not known

(2) No Miami origin. (3) No fares shown. (4) Carrier offers one class service which combines first and tourist class features.
(5) Change of plane at Havana. (6) Figures for Elapsed Time denote trips of shortest and longest duration.

Source: Official Airline Guide, World Wide Edition, April 1959.

5517
PAE-194

[fol. 5512]

B. TOTAL TRADE BETWEEN THE UNITED STATES AND EUROPE.

EXPORTS	
United Kingdom	$1,099,720,000
West Germany	953,482,000
France	586,722,000
Italy	661,418,000
Norway	[illegible]
Sweden	[illegible]
Denmark	[illegible]
Total	$3,707,206,000
IMPORTS	
United Kingdom	$ 765,359,000
West Germany	604,000,000
France	250,022,000
Italy	245,145,000
Norway	83,332,000
Sweden	116,713,000
Denmark	73,099,000
Total	$2,126,925,000
Total Exports	$3,707,206,000
Total Imports	2,126,925,000
Total Trade	$5,834,131,000

[fol. 5513]

TOTAL TRADE BETWEEN THE UNITED STATES AND AUSTRALIA AND ASIA

EXPORTS	
India	$ [illegible]
Phillipines	[illegible]
Japan	[illegible]*
Australia	[illegible]
Total	$ 2,249,487,000
IMPORTS	
India	$ 211,059,000
Phillipines	261,445,000
Japan	600,475,000
Australia	146,326,000
Total	$ 1,219,305,000

Total Exports	$2,249,487,000
Total Imports	1,219,305,000
Total Trade	$3,468,792,000

MICRO CARD
TRADE MARK ®
21

52
122

MATTHEW BENDER & COMPANY
MB
3-6-93

microcard

[fol. 5522]

WHITE & CASE, Esqs.,
Attorneys for Defendant Pan American-Grace Airways, Inc.;
Thomas Kiernan, Esq.,
Thomas Leary, Esq.,
Lowell Wadmond, Esq., *of Counsel.*

MURPHY, *D. J.*

Introduction

Nominally this is a government antitrust action brought pursuant to §4 of the Sherman Act, 15 U. S. C. 4, in which the defendants, Pan American World Airways, Inc., W. R. Grace and Company and Pan American-Grace Airways, Inc.,[1] are charged with violations of Sections 1, 2 and 3 of that act (15 U. S. C. 1, 2 and 3). Actually it is a continuation of a bitter family quarrel rampant since 1941 arising out of the unhappy and quondam unholy union of Pan American and Grace, each of whom owns 50% of the stock of Panagra, that the Civil Aeronautics Board (C.A.B.) could not resolve.[2]

Briefly, the complaint charges defendants with unlawful combination and conspiracy to restrain and monopolize trade and commerce between the United States and South America, particularly the west coast of South America. The relief sought is a decree requiring Pan American and Grace to divest themselves of their ownership of Panagra and enjoining all defendants from any and all challenged activities that are found to be violative of the antitrust laws. The ultimate objective of the government is to facilitate the merger of defendant Panagra with Braniff International Airways (Braniff), the only other American

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1 Hereinafter referred to as Pan American, Grace and Panagra, respectively.

2 The C.A.B. in 1945 and again in 1953 requested the Attorney General to institute this suit.

[fol. 5523]
flag carrier operating between the United States and South America aside from Pan American and Panagra. This is in accordance with the recommendation of the C.A.B. in 1954 in order to make possible thereby "effective" competition between American carriers in that area and to reduce substantially the heavy burden of subsidy presently borne by this government. *New York-Balboa Through Service, Reopened*, 18 C.A.B. 501, 505.

The principal defenses urged are condonation by the government of the acts complained of, estoppel and laches; immunity because many of the agreements and mergers and acts complained of were approved by the Civil Aeronautics Board under a grant from Congress that absolved the defendants from antitrust violations and, as far as Pan American is concerned, that this court has no jurisdiction at this time because of the primary jurisdiction conferred by Congress in the Civil Aeronautics Board.

The Parties

Pan American is a corporation organized in 1927 under the laws of the State of New York as Pan American Airways, Inc. In 1950 its corporate name was changed to Pan American World Airways Inc. Pan American directly operates routes in air transportation of persons, property and mail between the United States and various points in Europe, Asia, Africa, Australia and Central and South America. It is today the largest international air carrier in the world. It also has a number of subsidiaries, including foreign corporations engaged in the transportation by air of persons, property and mail.

Grace is a corporation organized in 1899 under the laws of the State of Connecticut with its principal office in New York City. Grace has subsidiaries which engage in

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3 We disregard Delta Airlines, Inc., whose operations to Venezuela subsequent to 1946 are not significant to the problems of this case. Braniff was certificated for South America in 1946 and commenced such operations in 1948.

[fol. 5519]

Pan American-Grace Airways, Inc. Exhibit 196

Comparison of Fares Charged by Competing Airlines (Northbound)
April 1959

	Regular Tourist Fares			
	One way		Round Trip	
Santiago to New York				
Panagra	$414.80(a)	$208.65(b)	$[illegible].60(a)	$386.27(b)
CINTA-ALA	192.80(b)(c)		347.04(b)(c)	
Aerolineas Argentinas	173.94(b)		313.04(b)	
Santiago to Miami				
Panagra	368.00(a)	155.10(b)	678.00(a)	279.17(b)
TAN/CEA/APSA	157.14(b)		282.86(b)	
LAN	155.10(b)		297.17(b)	
CINTA-ALA	152.48(b)(c)		274.46(b)(c)	
Santiago to Lima				
Panagra	126.00(a)	48.00(b)	242.00(a)	92.19(b)
Canadian Pacific	126.00(a)	70.20(b)	242.00(a)	133.68(b)
LAN	51.22(b)		92.19(b)	
TAN/CEA/APSA	48.00(b)		86.40(b)	
Santiago to Panama				
Panagra	284.00(a)	119.35(b)	526.00(a)	214.84(b)
LAN, CINTA-ALA, and TAN/CEA/APSA	119.35(b)		214.84(b)	
Buenos Aires to New York				
Panagra, Pan American, Braniff and Varig	461.50(a)	-	878.00(a)	646.10(d)
Aerolineas Argentinas	461.50(a)	-	878.00(a)	671.30(d)
Transcontinental	458.00	-	872.60	582.96(d)
Buenos Aires to Miami				
Panagra, Braniff	414.70(a)	-	784.40(a)	580.60(d)
LAN	288.00		519.00	
TAN/CEA/APSA	251.00		451.80	
Buenos Aires to Lima				
Panagra, Braniff, Canadian Pacific, LAN	180.00(a)		340.00(a)	
TAN/CEA/APSA	111.00		199.80	
Lima to Miami				
Panagra, Braniff and LAN	183.00(a)		331.00(a)	
LANICA	180.00		324.00	
TAN/CEA APSA	150.00		270.00	
APA	145.00		260.00	

Notes (a) Regular IATA Tourist fare.
(b) Chilean peso fares converted to dollars at 1,050 pesos per U.S.$. the free market exchange rate on April 2, 1959.
change of plane at Havana.
(d) 45 day round trip excursion fare.

5519

[illegible] Airline Guide, World-Wide Edition, April 1959 and Company [illegible].

COMPARISON OF FARES CHARGED BY COMPETING AIRLINES (SOUTHBOUND)
APRIL 1959

	Regular Tourist Fares	
	One Way	Round Trip
New York to Santiago		
Panagra	$414.80	$771.60
Aerolineas Argentinas	351.20	632.20
CINTA-ALA	286.10	525.60
Miami to Santiago		
Panagra	368.00	679.00
LAN	258.00	464.00
CINTA-ALA	232.50	418.50
TAN/CEA/APSA	210.00	378.00
Lima to Santiago		
Panagra, Canadian Pacific and LAN	126.00	242.00
TAN/CEA/APSA	70.00	126.00
Panama to Santiago		
Panagra	284.60	526.00
LAN	180.00	345.00
CINTA-ALA	177.00	318.60
TAN/CEA/APSA	160.00	288.00
New York to Buenos Aires		
Panagra, Pan American, Braniff and Iberia	461.50	878.00
Transcontinental	458.00	872.60
Aerolineas Argentinas	351.20	632.20
Miami to Buenos Aires		
Panagra, Braniff	414.70	784.40
LAN	288.00	519.00
TAN/CEA/APSA	251.00	451.80
Lima to Buenos Aires		
Panagra, Braniff, Canadian Pacific and LAN	180.00	342.00
TAN/CEA/APSA	111.00	199.80
Miami to Lima		
Panagra, Braniff	262.00	473.40
LAN	183.00	331.00
LANICA	180.00	324.00
TAN/CEA/APSA	150.00	270.00
APA	145.00	260.00

Official Airline Guide, World-Wide Edition, April 1959.

5520

[fol. 5520a] [File endorsement omitted]

[fol. 5521] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civ. 90-259

UNITED STATES OF AMERICA,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

OPINION—March 8, 1961

APPEARANCES:

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[fol. 5524]

various aspects of industry, trade and commerce including Grace Line, Inc., which operates a steamship route, among others, for the transportation of persons, property and mail between the United States and the west coast of South America.

Panagra is a corporation organized in 1929 under the laws of the State of Delaware. Panagra is engaged in air transportation of persons, property and mail over routes between the Canal Zone and Buenos Aires, Argentina, via the countries on the west coast of South America. It is wholly owned by defendants Pan American and Grace, each of whom owns 50% of the stock thereof. The principal offices of Pan American and Panagra are located in New York City.

Civil Aeronautics Board

Commercial aviation in this country is a highly regulated industry, but became such only after Congress passed the Civil Aeronautics Act of 1938 (C.A.A.).[4] That act authorized the creation of the Civil Aeronautics Board and established for the first time a comprehensive system of economic regulation of air transportation and removed, or attempted to remove, the threat of uneconomic and destructive competition in that field by providing that no air carrier may engage in air transportation without first receiving a certificate of public convenience and necessity. It gave to the President of the United States approval and veto power for such certificates as related to "overseas" and "foreign" air transportation (49 U. S. C. 601). Since, however, a number of air carriers were in operation prior to the act it provided that as to those they could receive certificates of public convenience and necessity,

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4 This Act, 52 Stat. 977, as amended, 49 U. S. C. 401 *et seq.*, was superseded by the Federal Aviation Act of 1958, 49 U. S. C. 1301, *et seq.*, and as far as relevant to this case the provisions are identical and reference will be made only to the Civil Aeronautics Act.

[fol. 5525]
under the so-called "grandfather" clause (49 U. S. C. 481(e)). Accordingly, Pan American and Panagra received certificates of convenience and necessity for the operations which had been conducted by them under the various foreign mail contracts.

Congress also provided what policy the C.A.B. should follow as being in the public interest and in accordance with the public convenience and necessity, and defined that policy as follows:

> "(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;
>
> "(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;
>
> "(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;
>
> "(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense; * * * " (49 U. S. C. 402).

Congress also gave to the C.A.B. the power to approve or disapprove rates and tariffs, all types of mergers, consolidations, acquisitions, pooling and other agreements (49 U. S. C. 481 *et seq.*) and with reference to certain of its orders antitrust immunity (49 U. S. C. 494).

[fol. 5528]

Conclusions

On the facts hereinafter found we have concluded (1) that the joinder of Grace and Pan American was not the result of conspiracy, but was a lawful combination with legitimate ends; (2) the division of territories understanding under which the operations of the two airlines were conducted was not unreasonable under the circumstances and not a *per se* violation; (3) that Pan American's restraints against Panagra and its continued determination to suppress the extension of that airline to the United States, in itself, and in combination with other conduct on the part of Pan American constitutes a monopolization of commerce that contravenes the provisions of the Sherman Act, and would seem to require divestiture by that defendant; (4) that Grace's stock ownership in Panagra does not *per se* violate the Sherman Act; (5) Grace and Panagra have not been found guilty of any antitrust violations; (6) price fixing for the most part is a mooted issue and in view of our decision with regard to Pan American need not be considered at length; (7) we will defer to the primary jurisdiction of the C.A.B. the legality of the joint advertising, sales and offices, etc. agreements between the two airlines; (8) we will defer to the primary jurisdiction of the C.A.B. the question of Grace's control in the management of Panagra.

The Facts

In 1927 substantially all transportation between this country and Latin America was by steamship. International commercial aviation was in the experimental stage and as yet no American air transportation company had entered upon operations from the United States to South America.

In October, 1927, Pan American began operations under the first United States Post Office contract for the carriage of the mails by air to a foreign country, by inaugurating

[fol. 5529]

such a service between Key West, Florida, and Havana, Cuba. Pan American also had a contract with the Cuban government for the carriage of Cuban mail to this country.

Between 1920 and 1927 several German and French companies had established commercial air transportation services in South America, in Colombia, Bolivia, Brazil, Argentina and Chile, and were receiving financial and diplomatic assistance from their governments necessary to the establishment and maintenance of such services. These foreign companies had envisioned routes throughout South America and had sought also to extend into the Canal Zone and to the United States.

Our government was greatly concerned for political, military and business reasons with the successful establishment of an American system of air transportation to Latin America, and recognized the need for legislation under which financial aid could be rendered to American companies to engage in international air transportation. The result was the enactment by Congress in March, 1928, of the first Foreign Air Mail Act (45 Stat. 248, amended, March 2, 1929, 45 Stat. 1449) which authorized the Postmaster General to let contracts for not more than ten years for the transportation of mail by airplane to foreign countries or insular possessions of the United States. The method of payment established by the Postmaster General was based on the mileage flown without relation to the amount of mail carried. It was in essence, subsidy.

On May 8, 1928, Pan American was awarded a contract under that act which superseded its 1927 contract for service between Florida and Cuba.

Pan American had started some time in late 1927 to formulate plans looking to the establishment of a complete system of air transportation serving all parts of the Caribbean, and Central and South America. It was aware of the potentialities of the Latin American market, as yet untapped by American international companies, and

The Complaint

The government's case was fashioned along three major lines which, however, are interdependent both theoretically and evidencewise.

The first line deals with alleged restraints of trade relating to a division of markets in the transportation of passengers, cargo and mail in commerce between the United States and South America asserted to be illegal both from the standpoint of reasonableness and as a *per se* violation of law. It is the government's claim that Pan American and Grace entered into an agreement prior to the formation of Panagra whereunder the proposed jointly owned company was to have the exclusive right to traffic along the west coast of South America from the Canal Zone south free from Pan American competition, and Pan American was to be free from competition from the proposed jointly owned company elsewhere throughout South America and between the Canal Zone and the United States.

The second line of attack relates to alleged restraints imposed upon Panagra by its two parent companies, Pan American and Grace. To a large extent the evidence of restraints on Panagra in the categories of joint offices, communications, equipment, publicity and sales are matters of agreement that must be initially approved by the C.A.B. and to a large degree have been approved and others are awaiting approval or extension of approval previously granted.

These agreements are, however, interrelated to the third line of attack wherein the government alleges that Pan American and Grace conspired to monopolize transportation between the eastern coastal areas of the United States and South America, particularly the western coastal areas of South America and Buenos Aires, Argentina. It is alleged that Pan American and Grace agreed to combine in

[fol. 5527]
the formation of Panagra, equally controlled by them to engage in a limited operation from the Canal Zone south along the west coast of South America with the intent and purpose of preventing competition between Pan American and Grace with respect to transportation by air and preventing the establishment of an air transportation service independent of the control of themselves which would be competitive with the projected air services of Pan American and the surface operation of Grace Line, Inc.

It is claimed that these defendants, pursuant to such alleged conspiracy, organized Panagra in such a fashion that they each have a negative control of the latter's competition with their independent operations, and have prevented Panagra's extension of its routes in South America and to the United States, and from developing its own facilities in the United States independent of the control of Pan American, and in South America independent of the control of Grace. In addition, they are said to have acquired the stock or assets of, or have entered into agreements with competing airlines in pursuance of their design to restrain and monopolize; and have retarded, restrained or eliminated competition from local airlines in South America, as well as having attempted and committed illegal restraints with respect to the operations of Braniff.

Grace, in addition, is charged with monopolizing or attempting to monopolize transportation by air and surface carriers between the United States and the western coastal areas of South America. The government also argues that the ownership and control of a competing air carrier by the dominant surface carrier in the same market necessarily violates the antitrust laws.

As to Panagra the government claims that it, together with Pan American, after 1946 engaged in restrictive practices to restrain and impede other airlines on the west coast of South America.

[fol. 5536]

can-Grace Airways, Inc., on February 21, 1929. Grace exercised its option to acquire 50% of the stock, and Panagra submitted a bid for the mail contract. Pan American and Grace each subscribed $500,000 to the capital stock of Panagra, including the amounts previously subscribed by them to the stock of Peruvian Airways Corporation.

On March 2, 1929, the Postmaster General awarded to Panagra the contract for Foreign Air Mail Route No. 9. Panagra was not the lowest bidder for this contract[8] but was found by the Postmaster to be the lowest responsible bidder that could satisfactorily perform the service to the best advantage of the government. In making the award, the Postmaster stated, *inter alia*:

> "This is the most important air mail contract that has as yet been awarded. Its importance goes not alone to the financial ability of the bidders but more directly and to a far greater degree to their proven and recognized capacity for performing the service contemplated.
>
> "The Pan American company has filed evidence of extensive preparation for the operation of an air mail route through the countries with which arrangements are necessary. It has had this particular service in view for the last two years and has for that length of time been conducting negotiations and perfecting arrangements for the carrying on of the service if in the fulness of time it should be awarded the contract for it. It has the required franchises under which to operate in the countries to be served and over which the line passes. It is indeed operating through subsidiary companies already in existence over a considerable portion of the route under consideration. In addition to this it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly estab-

8 The award of this contract was protested by the low bidder (American International Airways, Inc.), which protest was denied after the Attorney General rendered an opinion sustaining the legality of the award. See 36 Ops. Atty. Gen. 33.

[fol. 5537]

lished service by sea along the whole line of the proposed air mail route.

* * * * *

"I would repeat that the contract in question is for a route most difficult to serve but at the same time of very great and far-reaching importance not only to the public but to the whole future of transportation by air. Failure would be a serious blow to the prestige of American aeronautical enterprise."

Panagra commenced operations under this contract on July 12, 1929, and later, on October 12, 1929, inaugurated operations from Santiago to Buenos Aires after the route was ordered extended by the Postmaster General in August, 1929.

Until November of 1929 operations on Panagra's routes as far south as Guayaquil, Ecuador, were conducted by aircraft and personnel of Pan American because Panagra had not until that time secured operating rights in Colombia in its own name. By the end of 1929, Pan American's routes having been extended by the Postmaster General, it was operating regular service along the north coast of South America to Paramaribo, Dutch Guiana.

The joinder of Pan American and Grace, with their complementary resources, in the formation of Panagra to establish American air transportation on the west coast of South America was of decisive importance to the Postmaster General in awarding to Panagra the United States Mail contract for the west coast route. Such a contract was the umbilical cord of any proposed American flag international air operations in South America, without which they could not long survive. It is beyond peradventure that the successful inauguration of an international air transportation system in South America, with the flying equipment then available, with no airfields or ground facilities but what defendants supplied or arranged themselves, with only the air to fly in and the ground to land on, was

[fol. 5532]

tion to Pan American's application to the Colombian government, and entered into an agreement granting to Pan American exclusive use of its landing facilities along the north and west coasts of Colombia and in Ecuador, subject to its receiving permits from the Colombian government. In February, 1929, a treaty was signed between the United States and Colombia providing for reciprocal rights to aircraft of the two countries for landing rights in the Canal Zone and Colombia. The oral agreement for the purchase and sale of SCADTA stock was reduced to a formal writing in February, 1930, and finally executed in April of 1931.

In early 1928 Grace had independently begun to inquire into the possibilities of a west coast airline and had caused a study to be made with respect thereto. It began inquiries with governmental officials and in time became apprised of the activities of the Pan American interests and their plans for a west coast route. Pan American at this time was seeking to interest the principal shipping companies along the various proposed routes in financial participation as well as to secure the benefits of association with steamship lines, including air-sea rescue arrangements, and use of communication and agency facilities of these lines which would considerably decrease the amount of capital investment for such facilities immediately necessary in the operation of air transportation companies.

In May 1928, officials of Grace and Pan American conferred with a view to joint participation, and again in the following months. Grace's approach was a conservative one at the outset. It was naturally interested in the new form of transportation and fully appreciated the commercial possibilities of the airplane. It also appreciated the potentially competitive aspects of air transportation, but felt that it was quite risky at that early stage and no immediate threat as a competitor of its steamship lines.

At this time Grace was aware of the impending contracts to be offered by the Post Office, including the Miami-Canal

[fol. 5533]
Zone route which eventually went to Pan American, but its interest was limited to the proposed Canal Zone-Valparaiso route.

In the fall of 1928 Pan American entered into an agreement with Grace, evidenced by two letters dated respectively August 31st and September 7th,[7] whereunder each

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7 "August 31, 1928.

"Aviation Corporation of the Americas,
100 East 42nd Street,
New York City

Attention: Mr. J. T. Trippe

"Dear Sirs:

"This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

"A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

"We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U. S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

"If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

"You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such

[fol. 5534]

agreed to subscribe equal amounts to the capital stock of a corporation to be formed under the laws of Delaware to operate an airplane service in Peru with the view to ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile. The agreement pro-

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agency to continue during the life of transportation contracts under taken by the company.

"The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. Grace & Co.
William F. Cogswell,
Assistant Secretary."

"September 7, 1928.

"W. R. Grace & Company,
10 Hanover Square,
New York City

Attention: Mr. William F. Cogswell.

"Dear Sirs:

"We beg to confirm the arrangement set forth in your letter of August 31st.

"Supplementing paragraph four, however, we would point out the fact that in the event you decide not to take up a substantial interest in a jointly owned Company, organized or to be organized for the purpose of submitting a bid on the contract for carrying mails between Panama Canal and Valparaiso then, and in that event, we would prefer to bid on the contract through the medium of Pan American Airways, Inc., or some other wholly owned subsidiary.

"If this were done, we would arrange to allow you, if you desired, to take a further stock interest in Aviation Corporation of the Americas, in addition to the $25,000 referred to in paragraph five.

"Our Directors are delighted that we are to be associated with your firm in the development of air transportation on the West Coast of South America, and we look forward to a most pleasant and profitable relationship.

"We would appreciate your advising us if this letter, in connection with yours of August 31st, covers your understanding of our arrangement.

Yours very truly,

AVIATION CORPORATION OF THE AMERICAS

By J. T. Trippe,
Vice President."

[fol. 5535]

vided that the two companies would cooperate in studying the costs of operations on such route and that if Pan American determined that it was advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the amount contributed by Grace to the stock of the company which was to operate in Peru should be treated as a contribution to the stock of the company making the bid and Grace was to have an option to take an additional interest in such a company not to exceed 50% of the total capitalization. Pan American was to "have charge of the operations of the service from the Canal to Valparaiso" and the Grace houses on the west coast of South America were to act as agents for the company.

Pan American's study of this route indicated that even with the revenue of a United States mail contract, conditions did not then justify its undertaking to install an air transportation service in that area. By combining with Grace, however, they mutually concluded that they could operate a west coast service more economically than could any other air transportation company, including the French and German companies.

The Delaware company referred to in the letters was formed under the name "Peruvian Airways Corporation" and it began operations in Peru in September, 1928, under the Peruvian concession and contract referred to above. In January, 1929, Grace and Pan American secured operating rights in Chile and, as stated earlier, Pan American's negotiations with SCADTA had set the stage for a concession from Colombia. On January 31, 1929, the Post Office Department issued an advertisement for a contract for Foreign Air Mail Route No. 9, from the Canal Zone down the west coast of South America to Santiago, Chile, with an option in the Postmaster General to extend the service from Santiago across the Andes to Buenos Aires, Argentina, and Montevideo, Uruguay.

Panagra was formed on January 25, 1929, as South American Airways Corporation and changed to Pan Ameri-

equally aware of the impending legislation to subsidize American air lines. With knowledge of the projected routes of the Post Office Department (see House Report 481, 70th Cong., 1st Sess., 1928) or better, the active sponsor of them, it began studies in early 1928 of proposed routes from Miami, Florida, to the Canal Zone, and the Canal Zone to Valparaiso, Chile.

Pan American's ambitions, however, were not equalled by its assets[5] or financial resources, and ultimately, in June 1928, all of its stock was acquired by a holding company formed for the purpose of raising capital to enable Pan American to bid on the mail contracts advertised or about to be advertised by the Postmaster General, and to conduct operations under contracts it was awarded. This company was called the Aviation Corporation of the Americas (ACA) and included among its assets acquired at the time of the acquisition of Pan American, was an option to operate a concession by the government of Peru for the establishment of an air transportation service between the United States and Peru. In June 1928 ACA acquired a contract for the carriage of Peruvian air mail to the United States. The concession and mail contract were intended ultimately to be assigned to Pan American if and when it began a west coast service contemplated in its plans.

On July 13, 1928, Pan American was awarded the United States mail contract for the route from Miami to the Canal Zone, for ten years, with an option in the Postmaster General to extend the route along the north coast of South America via Trinidad, as far as Paramaribo, Dutch Guiana. On the same day Pan American was awarded a 10-year contract for a route from Miami to Puerto Rico, with a similar option for the extension of this route to Trinidad.

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5 It owned three airplanes—two Fokkers and one Fairchild.

[fol. 5531]

In order to engage in air transportation operations into or within any of the countries of South America at this time, as well as today, such operating rights must be granted by the government of each such country whether by permit or concession. Wi hout such rights Pan American or any foreign company could not even fly over these countries.[6] By the end of July 1928, Pan American had instituted negotiations for operating rights in Panama, Colombia and Ecuador. By reason of the option in Peru it was assured of rights in that country (or it could subcontract that portion of its proposed west coast operations to a Peruvian subsidiary). If it could secure rights in the first mentioned countries and in Chile the way would then be clear for the proposed operations under a contract to be advertised by the Postmaster General from the Canal Zone to Valparaiso, Chile. In Colombia, however, Pan American's efforts to acquire operating rights were opposed by German interests who controlled SCADTA, a Colombian air line organized in 1920 and operating in that country and between Colombia and Ecuador. The owners of SCADTA were influential with the Colombian government. They had sought to extend their line to the Canal Zone and thence to this country since 1925 or 1926 but without success. Being thus situated, they had successfully opposed Pan American's applications for Colombian rights and thereby blocked the extension of American flag operations south of the Canal Zone.

As early as 1927, Pan American sought to purchase all of the stock of SCADTA, and these negotiations continued until January 1929, at which time the principal stockholder and managing director of the company orally agreed with Pan American to sell sufficient stock to enable Pan American to gain control of the company. The agreement to purchase SCADTA stock immediately opened the way for the establishment of an American flag west coast airline, for as part of the agreement, SCADTA withdrew all opposi-

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6 Cf. *Northeast Airlines, Inc.—North Atlantic Route Case*, 6 C.A.B. 319, 322.

[fol. 5538]

in the truest sense a pioneering endeavor.[9] The technical and physical resources possessed by each of the defendants, together with the financial and diplomatic assistance rendered by this government, were pooled to facilitate the success of Panagra, the American entry on the west coast of South America.

In September, 1930, Pan American acquired the assets of New York, Rio & Buenos Aires Line, Inc. (NYRBA), an American company which had been formed in March, 1929, by persons independent of Pan American and Grace with the purpose of operating an airline service under mail contracts obtained in South America, from Miami through the Caribbean, and down the north and east coasts of South America to Buenos Aires, and across the Andes to Santiago, Chile.

The key to the successful maintenance of an American airline in Latin America was a United States Post Office mail contract, without which a company could operate only at a heavy loss. The joint company (Peruvian Airways) which preceded Panagra operated at a loss on the west coast prior to the awarding of the contract to Panagra for that route. Pan American had instituted competitive services on the east coast with NYRBA prior to September, 1930, without the benefit of a United States mail contract for that route and it too, as well as NYRBA, sustained heavy losses amounting to about $40,000 a month. It nevertheless so operated in order to put itself in position to compete with NYRBA in bidding for a proposed United States mail contract for the east coast route. NYRBA had two wholly owned subsidiaries, Trimotor Safety Airways, Inc. and NYRBA do Brasil, and together they had secured contracts from the governments of Argentina, Brazil, Uruguay, Chile and Venezuela, for the carriage of mail from those coun-

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9 See a newspaper account of 10-day inaugural flight, Buenos Aires to Miami, Chicago Daily News, October 18th–November 1, 1929. See, too, *Latin American Air Service Case*, 6 C.A.B. 857, 865.

[fol. 5539]

tries north to the United States. These contracts were at considerably lower rates of pay than those awarded by our Post Office Department, and because of the scheme of its contracts, it created a problem for the Post Office Department with possible embarrassment with countries on the west coast of South America who contracted with Panagra. The situation also created a problem with respect to the award of a satisfactory mail contract if there was to be competitive bidding between NYRBA and Pan American. The Postmaster General determined not to advertise for an airmail route down the east coast of South America from Paramaribo unless some satisfactory arrangement could be made between Pan American and NYRBA, and apparently suggested that the two companies merge. Pan American was concerned about possible antitrust implications in the proposed merger and sought advice and "clearance" from the Department of Justice.

In a memorandum to that department dated July 18, 1930, Pan American set forth the details of the proposed acquisition of all of the assets of NYRBA, the competitive situation between the two companies, as well as with respect to foreign airlines in the area, and also as regards competition from steamships along the proposed route. Pan American demonstrated the economic impossibility of continued competition between itself and NYRBA on the same route without an air mail contract from the United States Post Office, and that it was the policy of the Post Office Department not to subsidize two contractors in South America for the same route. Pan American pointed to the diplomatic and financial assistance given to its foreign competitors by the French, English and German governments, and that effective similar assistance from the State Department could be rendered to only one American operator in the same area. In this memorandum Pan American disclosed its interest in Panagra, indicating that Panagra was part of the Pan American system, and also that the assets of NYRBA included NYRBA's wholly owned subsidiaries.

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Pan American made a persuasive argument to indicate that the acquisition would be of substantial benefit to the public, and was of particular interest to the Post Office Department, the Department of Commerce, and to the State, War and Navy Departments as well. On August 1, 1930, the Department of Justice responded, *inter alia*, as follows: "Upon the basis of the information thus furnished the Department does not at the present time deem that any action by it would be warranted if the proposed acquisition should be effected. This, however, cannot under the law limit the full freedom of the Department to take such later action as future developments, further information or a subsequent consideration of the questions involved may in its judgment warrant."

Pan American made no mention of its earlier agreements, first oral and then written, with regard to its purchase of control of SCADTA, the acquisition of 84% of whose stock was thereafter completed in April, 1931. It claims that both the oral and written agreements were required by the seller to be kept strictly confidential until the sale was completed, and that Pan American adhered to that condition, disclosing it, one of its officers testified many years later, only to the Secretary of State on a personal and confidential basis. What effect disclosure of its impending acquisition of SCADTA may have had on Pan American's application for "clearance" from the Department of Justice we can only speculate.

As we said above, Pan American did acquire the assets of NYRBA in September, 1930, together with the stock of NYRBA do Brasil as contemplated in its memorandum to the Department of Justice, and in October, 1930, the name of that subsidiary was changed to Panair do Brasil. (In 1935, Pan American secured its own operating concession from Brazil and then reduced its stock in Panair do Brasil to 58%, and again in 1947 to 48%. In 1940 SCADTA merged with another Colombian airline and the name was changed to AVIANCA. Pan American received 64% of

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the stock of AVIANCA, which was reduced in 1945 to 48% and as of 1954 it owned 38% of AVIANCA. The 1940 merger was precipitated by the Colombian government which passed a law in that year requiring the majority of SCADTA stock to be owned by Colombian Nationals. How it disposed of its stock and to whom, and what the relationship was or is, was not disclosed by the evidence.)

On September 24, 1930, the Postmaster General awarded to Pan American a contract for a route from Paramaribo down the east coast to Santos, Brazil, with an option to extend the route to Buenos Aires. Pan American inaugurated service to Buenos Aires under this contract in 1931.

This last extension of Pan American's east coast route rounded out the United States air mail service throughout South America. The entire northern and eastern part, and the northern portion of the western part from Miami to the Canal Zone were operated by Pan American, and the southern portion of the western part from the Canal down the west coast and across the Andes operated by Panagra.

In August, 1931, Pan American organized UMCA, a Delaware corporation, to which was assigned a concession theretofore granted by the Colombian government to one of its nationals for a route between Medellin, Colombia, and Panama. The concession required as a condition that the proposed airline become associated with an American company to be approved by the Colombian government. The assignment to UMCA, in which Pan American acquired a 75% voting interest, was approved by the Colombian government and UMCA commenced operations in July, 1932. (In 1947 Pan American acquired all of the stock, which it retains to this day. In 1948 Pan American sought approval from the C.A.B. of its proposal to acquire all of the assets of UMCA and, though the hearing examiner recommended it, the C.A.B. has never acted on the

[fol. 5542]

recommendation. In 1959 UMCA applied for leave of the C.A.B. to abandon its certificated operations.)

Pan American and Panagra merely had landing rights in Colombia along their international routes at this time. The acquisition of UMCA enabled Pan American to carry traffic into Colombia, which was one of the reasons for its acquisition and, additionally, Pan American considered this route as a link in a possible short-cut route across South America to Buenos Aires and Rio de Janeiro. SCADTA had a monopoly in the carriage of Colombian mail and a virtual monopoly for all intra-Colombian traffic, partly because of the air policy of the Colombian government and partly because of a tripartite agreement among Pan American, Panagra and SCADTA, whereunder SCADTA withdrew from operations into Ecuador in competition with Panagra and withdrew its opposition to the efforts of Pan American and Panagra to acquire landing rights in Colombia. In return Pan American and Panagra agreed not to press for rights to operate within Colombia.

In 1934 Panagra formed a Peruvian company, Aerovias Peruanas, in order to protect its position in that country. At the same time the original joint company, Peruvian Airways, was dissolved. After about four years of very strong competition between Panagra, and its Peruvian subsidiary on the one hand, and Faucett Aviation Company, the leading Peruvian company, on the other hand, with both sides sustaining heavy losses, Panagra and Faucett reached an agreement whereby Panagra's subsidiary withdrew from all operations in Peru, and Panagra acquired 20% of the stock of Faucett. Panagra's local service in Peru was to be limited to that incident to its international itinerary and its tariffs for such local service was to be based upon its international rates, which would effectively maintain a differential between its fares and those charged by Faucett. Faucett was thereafter to confine its activities to local service within Peru and to re-

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frain from entering into any connection with any international company without the consent of Panagra.

In 1944 Panagra submitted this agreement to the C.A.B. for its approval. In 1949 the C.A.B. disapproved the above provisions which were accordingly cancelled by Panagra and Faucett. Today Panagra's stock ownership in Faucett amounts to about 19%. A law passed by the Peruvian government in 1949 effected a suspension of Panagra's rights to carry local traffic (cabotage) along its international route. Panagra re-established their local services in Peru within their international lines in 1952, after agreeing with Faucett, in consideration of the latter's not opposing such re-establishment, to calculate its rates for such local service on the basis of its international rates, and not to advertise within Peru, such local services.

At the instigation of the State Department and in cooperation with other federal agencies, Panagra in 1941 acquired a stock interest in a Bolivian airline, Lloyd Aeros Bolivianos (LAB) and entered into a management agreement to manage that line. This acquisition was pursuant to this country's de-Germanization program with respect to South American airlines. Panagra's stock interest in this company amounts to about 21% today.[10]

The prime objective of the defendant airlines in the first decade of operations was to secure and solidify the position of their main international trunk lines throughout the countries in South America through which they ran. They considered the maintenance of local subsidiaries essential to that end and the bulwark of their international links. Through these lines they sought to obtain the good will of the nationals of these countries and the cooperation of local governments. They also served as feeder lines for their through routes and as the instrumentalities through which they could secure from the local govern-

10 To complete the picture, Pan American also owns today, some 30% of the stock of a Venezualan airline, AVENSA.

[fol. 5546]

to have agreed not to seek to extend their joint company to the United States in competition with Pan American.

The conspiracy theory is appealing, because if it were found to be the fact a court of equity would not hesitate to order both defendants to divest themselves of their interest in Panagra, and to thereby definitively rectify an unhealthy situation that exists in the South American phase of American aviation, attributable to Pan American and Grace's joint ownership. *Pan American-Matson-Inter-Island Contract*, 3 C.A.B. 540, 548; *Panagra Terminal Investigation*, 4 C.A.B. 670, 678; *Latin American Air Service Case, supra*, at 914. See, too, discussion *infra*, page 45 *et seq.* re C.A.B. litigation.

We have carefully considered all of the evidence relating to the conspiracy charge and, in our opinion, no such conspiracy existed between Grace and Pan American. The only agreement we can find that approaches conspiracy is their understanding that Pan American and Panagra were not to parallel each other's routes. In our opinion this was not a conspiracy to monopolize and restrain trade and commerce.

The defendants' dominant position in South America which they enjoy today, and have over the years, may be explained in simple terms without unlawful implications: Pan American and Panagra got there first as American flag carriers (discounting NYRBA) by virtue of the foreign airmail contracts of the first decade and, since under the aegis and control of the C.A.B. and the President with respect to the certification of additional carriers since 1938, have enjoyed the South American market, so far as American flag carriers are concerned, exclusively until the start of operations by Braniff in 1948.

For approximately 20 years these two defendants were the sole American entries in South America and as such had exclusive claim to such aid that could be expected from this government in solidifying their position to the advantage of this country. They built up their services and good

[fol. 5547]

will correspondingly. And if it were not for the action of Pan American in suppressing Panagra's extension to the United States, they would in all probability remain the only two American carriers in South America. At the time of Braniff's certification, at the end of World War II there was expected a significant increase in traffic sufficient to support a third carrier in the South American market. That traffic has not materialized. Moreover, foreign competition has increased. Cf. *New York-Balboa Through Service, Reopened, supra* (concurring opinion).

Prior to 1938 there was no legislation regulating commercial aviation. The C.A.A. makes express provision for the approval by the C.A.B. of mergers, acquisitions and all manner of agreements between air carriers with antitrust immunity. 49 U. S. C. §§488, 492, 494. The absence of such legislation in the experimental stage of international aviation did not obviate the necessity for such action in that period by carriers within the framework of the antitrust laws. The experience gained between 1928 and 1938 must have emphasized the need therefor. Defendants' acquisitions and agreements among themselves and with foreign airlines may well have been approved by the C.A.B. were it then in existence. We find substantial reasons and circumstances then extant that might have justified such approval. Under the circumstances, we feel constrained to accept those consistent with innocence from among the equivocal inferences permissible from the evidence presented.

The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America. Grace had the established branches and agencies on the west coast and all the facilities used in connection with the operations of the steamship line that could be used to such advantage in connection with the new airline opera-

tion. Grace also had widespread commercial contacts, a respected trade name and considerable influence in the countries along the proposed route. Pan American was further advanced than any other American company in the carriage of foreign air mail, and had the technical aviation skill which Grace lacked at that time. The union of their physical and technical resources assured the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (6th Cir., 1898) modified and aff'd 175 U. S. 211.

Grace's principal interest at the time was in transportation. Its interest in a new technique of transportation which to a large degree was most surely to generate its own traffic is readily understandable quite apart from consideration of the threat of competition with its steamships. Grace recognized the potential of air transportation in the commercial development of the South American countries in which it had extensive investments, and it had a great deal to offer to enhance that development. We cannot, from the evidence adduced, make out an unlawful intent to restrain aviation competition in the Grace participation in the formation of Panagra, and the history of Grace's activity in the affairs of Panagra preponderatingly demonstrates that it fostered and fought for Panagra development and expansion. To be sure, Grace sought continuously to control the management of Panagra, and its efforts were crowned with success in 1939. Its desire to control the management can as readily be explained as an aggressive business instinct, intensified in the light of the conflicting, containing attitude of Pan American, as well as from the standpoint of its asserted attempt to monopolize all transportation on the west coast. We are buttressed in our choice of the former in that the record before us fails to disclose any antitrust violations on the part of Grace vis-à-vis Panagra, unless

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it be *per se* violative of the Sherman Act for Grace to own the stock that it does in that company. We will defer discussion of that issue to later in this opinion.

Clearly, Grace did not contemplate joining in the venture as a mere investor, though the terms of its agreement with Pan American as disclosed in the two letters, *supra*, did not contemplate that it would actively manage the line. The question of its ascendency to that management, since it occurred in 1939 subsequent to the creation of the C.A.B., is one that the C.A.B. has always been in a position to remedy if it in fact is in contravention of the C.A.A. §408(b) (49 U. S. C. 488(b)).[13] The apparent reluctance of that body to entertain the issue probably is rooted in dilemma. If Grace were divested of the management Pan American would succeed thereto. The progression would be from merely theoretical to further and more complete actual restraint and suppression. If Pan American is ordered to divest itself of Panagra the question of Grace management of Panagra may then be disposed of by the C.A.B.

Division of Territories

Consideration of the defendants' agreement or understanding with respect to the respective spheres of operations for the two airlines, when viewed in the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved,[14] as well as the relation of the parties one to the other and the nature of the industry itself,

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13 Cf. *New York-Balboa Case*, Order No. E-5737 (Sept. 21, 1951). See, also, C. A. A. §§408 and 415 (49 U. S. C. 489 and 495).

14 For example, between 1947 and 1958 the government gave Pan American $61,480,000; Panagra $13,925,000 and Braniff $15,461,000 by way of pure subsidy.

ments the rights to carry local traffic along the points of the international lines. These subsidiaries served also as a wedge whereby defendants could successfully oppose the efforts of local national companies that sought to secure monopolies within their own countries. It was a costly and losing proposition, however, to maintain these subsidiaries. It was more economical and ultimately more advantageous to acquire a stock interest in an influential national company.

Conclusions Re Conspiracy

The acquisitions, alleged predatory practices,[11] division of territories[12] and agreements with competitors have long been known to this government, and there is no dispute as to the facts and surrounding circumstances. The dispute relates to the inferences which we are asked to draw from the evidence. The argument for the inference of conspiracy is appealing to a mind bent on finding conspiracy.

From the outset, both Grace and Pan American had to fully appreciate the dangers of competition between themselves for the air mail contract about to be advertised for the west coast route. Neither of them might get it, or one could succeed but probably at a prohibitively low bid. They also must have realized that conflicts would arise in their partnership.

Grace was aware of the competitive potential of air transportation with its large steamship investments. So was Pan American aware of potential competition, but its ambitions were far more extensive than Grace's in air transportation at that time. Pan American sought to extend its system throughout Latin America. It could not do so without all of the mail contracts to be awarded. Grace's interest

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11 See discussion *infra*, page 65 *et seq.*

12 See discussion *infra*, page 29 *et seq.*

[fol. 5545]

was confined to the west coast of South America where it was strongly established, and that was the only area where it faced competition from an airline. The award of a Post Office contract for each sector of South America, in effect, assured the American contractor of a monopoly in that sector insofar as American flag operations were concerned, and the invaluable assistance of the State Department and Post Office Department in the carrier's relations with the countries along its route.

By joining with each other in a joint venture on the west coast, Grace on the one hand would be assured against the entry of an independent American airline competitor into its west coast domain, and gain time to acquire the experience and know-how of this new industry, and one day perhaps to succeed to complete domination of the joint company. Pan American on the other hand would be substantially free from American flag competition in the rest of Latin America. Their method of organization of the joint company appears calculated to give each negative control of the company to insure against the possible treachery of the other to expand the operations of the company in competition with their respective independent lines, and their divisions of operational and agency functions of Panagra was similar added protection.

Each of these two defendants occupied a strong bargaining position. They needed the attributes of each other in the operation of an airline on the west coast, and they feared the consequences of each other's opposition. Together they were an irresistible combination bidder to the Post Office Department. Their combined interests on the west coast could insure the greatest possibilities for the success of an American carrier in that area, and at the same time protect their independent systems from the competition of such carrier. An agreement to divide the territory of operations between the two air carriers is consistent with such a design, and it is equally consistent for Grace

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compels the conclusion on our part that it involved no violation of the antitrust laws.

The defendant airlines had to be self-contained enterprises involving large amounts of fixed capital outlay for facilities that would normally be made available to them in this country by governmental authorities. They had to build their own landing fields, provide their own meteorological service, and maintain their own communications system, and in connection with building up operating and traffic organizations they of course had to maintain offices in all of these countries and establish good will with the governments and peoples through whose territory the lines must pass. And in addition to technical and equipment problems they contended with substantial competition for the available traffic from foreign lines that had established themselves before the defendants and who were maneuvering for monopoly concessions that would have precluded defendants from their markets. The State Department actively assisted defendants in defeating the foreign company designs for monopoly concessions and in securing American operating rights along their routes. The contracts awarded by the Post Office Department defined the international route of the contractor, and so to a large extent defined the area of development and expansion of any such contractor. The Post Office policy during the years 1928 to 1938 was to award but one contract for each route, in effect to subsidize one American carrier in a particular sector. The ideal route pattern as envisaged by the C.A.B. today is to have two carriers, Pan American and a merged "Panagra-Braniff," and the only difference from that existing prior to Braniff's entry would be the extension of "Panagra-Braniff" to the United States. Competition among American carriers under the policy of the Post Office Department under the foreign mail contracts, was economically impossible, and most likely detrimental to the sound development of American flag service, which would have complicated or embarrassed the effective rendition

[fol. 5551]

of diplomatic assistance from the State Department, and actually cause a waste of public monies. Competition between Panagra and Pan American certainly was not encouraged by this government. On the contrary, there appears to emerge from the evidence presented a definite policy of the government approving a sort of "zoning" for the operations of the American international carriers in the nature of east and west coast spheres as was ultimately arranged between Pan American and Panagra. Agreement not to parallel each other's service in South America seems perfectly consistent with the air transportation policy of this country in those formative years. It is only with respect to the northern extension of both lines to the United States that restraint of competition between Pan American and Panagra whether by agreement or unilateral action, in our opinion, falls under the condemnation of the antitrust laws. This relates primarily or wholly to the question of Panagra's extension to a United States terminal.

There is no doubt that defendants came to agree upon a division of territories; the dispute relates to when such agreement came about and what its details were. Pan American says that it and Grace reached agreement prior to the formation of Panagra that Panagra was to operate only on the west coast of South America from the Canal Zone to Valparaiso, Chile, and that was to be the entire extent of its operations. Pan American was to conduct operations throughout the rest of South America, including operations within the interior of South American countries, as well as its other services in the Caribbean and Central America, and between the United States and the Canal Zone, for which areas it had already secured the United States mail contracts. By reason of the mail contract ultimately awarded to Panagra, its terminal in Chile was changed to Santiago, and the scope of Panagra operations was extended to Buenos Aires and Montevideo. The gov-

ernment apparently accepts Pan American's version of the agreement.

Grace on the other hand contends that their territorial agreement was entered into *after* Panagra's formation and was, in general terms, to the effect that Panagra was to operate on the west coast and in all the countries of the west coast through which its international mail line ran, as well as over the Andes to Buenos Aires and Montevideo, and that there was no intention one way or the other contemplated *mutually* by them with respect to possible extension of Panagra's line to the United States. As for pre-Panagra agreement, Grace says that it was merely to combine their efforts, talents and resources in a jointly owned company to operate an air transportation service on the west coast, and specifically, to bid on the proposed mail contract for that west coast route. Grace contends that it was only in November, 1929, after Panagra's route had been extended by the Postmaster General at its request, to Buenos Aires, that any detail was added to their east coast-west coast understanding, and this concerned Panagra operations in the Argentine.

Pan American had organized an Argentine subsidiary (ALAS) in June, 1929, to operate locally in Argentina to give it legal standing there, and to develop cabotage business for Pan American's operations. Because of the operations of this subsidiary, ALAS, Panagra and Pan American reached an understanding whereby Pan American and ALAS had the exclusive right to Argentine traffic throughout that republic with the exception of that traffic between the points on Panagra's route—between Buenos Aires and Mendoza, Panagra had exclusive right, and between Buenos Aires and Montevideo, Panagra would compete with ALAS.

The understanding was again given substance after Pan American had acquired NYRBA, when in September, 1930, ALAS made some flights to Santiago from Buenos Aires, parallel to Panagra's route. Pan American put a stop to these flights when Grace complained.

[fol. 5553]

Their agreement with respect to the Argentine figured again in the development of Panagra in 1935 when Pan American finally consented to Panagra operating a service from Tacna, Peru, to La Paz, Bolivia, on condition that there would result no prejudice to the arrangements or understanding relating to the traffic interests of Panagra in Argentina. This question arose because the Bolivia operations were sought by Panagra as a prerequisite to its instituting an alternate route to Buenos Aires through Bolivia and several Argentine cities. Panagra instituted such an alternate route to Buenos Aires in 1937. Pan American withheld its consent to that alternate route hoping to get Panagra to pay for a portion of the expense of its acquiring NYRBA, because NYRBA supposedly had incurred expenses in developing part of the route over which the new alternate route of Panagra's passed. No payment was ever made.

In early 1937 Panagra, at the invitation of the Colombian president, wanted to divert its international line into interior cities of Colombia, viz., Cali and Medellin. SCADTA had opposed this deviation and, in addition, threatened to extend its own line to Ecuador in competition with Panagra. Pan American opposed the proposed Medellin stop because it would divert traffic from its wholly owned subsidiary, UMCA, operating between Medellin and Panama. Panagra agreed to settle for the Cali stop, and Pan American helped overcome SCADTA opposition thereto, as well as to overcome the threatened competition of SCADTA to Ecuador. The Cali stop was approved by Panagra's board in January, 1938, Pan American's nominees abstaining.[15]

In 1951 Pan American's subsidiary, Panair do Brasil, at the instigation of the government of Brazil extended its routes from Rio to Santiago and Lima. Grace had sought

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15 After the Through Flight Agreement of 1946, discussed *infra*, page 50 *et seq.*, Pan American approved of Panagra's extension to Medellin and Bogota, Colombia.

[fol. 5556]

of the United States entirely on foreign flag lines. In addition it is published for only two months of the year, viz., the months of March and September. In this case the latest one used by the government economist was the September, 1957, survey.

The other source of statistical information is the I.N.S. series. This information does cover foreign flag carriers but it does not provide the name of the carrier involved. It makes no distinction between passengers who fly on a non-revenue basis or on non-scheduled flights or in non-commercial planes. It does not include passengers in a military class. Its total statistics, therefore, are larger than the comparable statistics for the United States flag carriers as collected by the C.A.B. and therefore are more advantageous to the defendants if those statistics are used exclusively.

We find that by the use of both, a reasonably reliable picture of the relative positions of Pan American and Panagra is reflected and their relative participation in the traffic shown.

From these statistics it is obvious that Pan American and Panagra have retained a very high degree of dominance over other United States flag airlines in the transportation of passengers between the United States and South America. In fact they have either together or separately participated in the movement of from 75% to 88% of the passengers who used United States flag airlines between the United States and South America during the period 1950-1957.

With respect to such journeys between points of origin (or destination) in 16 eastern states[16] and South America,

16 Includes the New England states and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia and Florida. It is estimated that this area accounts for about two-thirds of the United States-South American passenger traffic.

[fol. 5557]

Pan American and Panagra have participated in carrying from 88% to 96% of the passengers during 1950-1957.

Panagra is the dominant United States flag airline participating (almost entirely with Pan American) in the movement of passengers between the United States and points in western South America (western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, other than Buenos Aires). During the 1950-1957 period Panagra carried between 79% and 86% of this traffic and from 84% to 93% of the eastern United States, western South America traffic.

Pan American is the dominant United States flag carrier participating in the transportation of passengers between the United States and eastern South America (eastern Colombia, Venezuela, the Guianas, Surinam, Brazil, Paraguay and Uruguay). Without any participation by Panagra it accounted for 66% to 85% of this traffic and between 84% to 95% of the eastern United States–eastern South America traffic during the 1950-1957 period.

Both lines, Panagra and Pan American, fly to Buenos Aires by separate routes (Panagra via western South America and Pan American by eastern South America) and are obviously competitive in that category. Together they have accounted for 92% of all the passengers carried by United States flag airlines between the United States and Buenos Aires, and 94% of such traffic between eastern United States and Buenos Aires during the 1950-1957 period. During this period Panagra (in participation primarily with Pan American) carried more than one-half and Pan American (with no Panagra participation) carried two-fifths of the United States-Buenos Aires traffic on United States flag lines.

Using the I.N.S. statistics so as to round out the picture and include the foreign flag carriers, we find that Pan American and Panagra have participated in the transportation of approximately 50% of the total number of

to have Panagra apply to extend its routes from Lima to Rio some time earlier but Pan American would not agree.

We find that the agreement between the defendants as to spheres of operations and its evolution was substantially in the manner described by Grace. We accept the version of Pan American, not as respects mutual agreement between it and Grace, but as representing its own intentions for the destiny of Panagra.

An agreement not to duplicate or parallel each other's service in South America would seem to be consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938, and it was this type of competition from Pan American, through its subsidiary ALAS, and through SCADTA which Pan American controlled at the time, against which Grace invoked successfully the territorial agreement. Pan American, through its negative control of Panagra was always capable of preventing paralleling of its routes by Panagra, and Pan American over the years has in addition successfully delayed or prevented within-South America extensions of Panagra which would not have resulted in paralleling its operations.

For the purposes of this suit, however, we find sufficient basis in the Pan American suppression of Panagra efforts to extend to a United States terminal upon which to predicate our conclusion that Pan American monopolized that sector of commerce between the United States and South America and between the United States and the Canal Zone to warrant relief against it.

Pan American's Restraints Against Panagra

The thrust of the government's evidence was directed to the alleged monopolization or attempted monopolization by Pan American of air transportation between the United States and South America. While it also charges monopo-

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lization by Grace of air and steamship transportation, that charge is treated *infra*, page 61 *et seq.*

The market or the "area of effective competition" which is the subject matter of this inquiry is air transportation between the United States and South America, particularly the west coast. Whether it should include only American flag carriers or all carriers is debatable, but to resolve it most favorably to the defendants we will treat the problem separately and jointly. It would seem fair, too, because of the areas involved to subdivide, as the government has, several appropriate markets or relevant market segments and correlate these to United States flag carriers and all carriers.

In the early 1930's less than 5% of the passengers between the United States and South America were carried by air, but since 1954 the airlines are handling 80% of such traffic. Pan American is the largest international airline in the world and in 1957 flew 3,500,000,000 passenger miles. One-third of its business is in Latin America.

There does not exist a completely accurate record of statistical data measuring the volume of traffic moving by air or sea between the United States and South America. The available sources developed by different agencies of the government and using somewhat different reporting procedures are those prepared by the C.A.B. and the Immigration and Naturalization Service (I.N.S.). The OD survey of the C.A.B. shows the origin and destination of air travellers and their complete air journeys; it shows the airlines involved in carrying people between those points and is limited to passengers who fly on commercial airlines in scheduled flights and on a revenue basis. It is limited, however, to carriers, as far as international traffic is concerned, who are certificated by the C.A.B. and includes only those passengers who either entirely or in some part of their journey used United States flag air carriers. It does not cover passengers who travelled out

passengers travelling by air between the United States and South America on United States flag and foreign flag carriers during the period from 1952-1957. Approximately one-sixth of the total traffic was carried by other United States flag carriers and about one-third was accounted for by foreign flag carriers in this period.

The dominance of Pan American and Panagra in the United States-South America traffic market is obvious since the traffic that was not carried by Pan American and Panagra (approximately 50% of the total) was divided among at least ten[17] other airlines, i.e., eight foreign flag carriers and two other United States flag carriers. In this connection, too, it should be observed that two of the foreign flag carriers, Avianca and Avensa, that carry passengers between the United States and South America are "affiliates" of Pan American, i.e., Pan American owns a substantial minority share of their outstanding stock.

The I.N.S. statistics show that with respect to passenger traffic between the United States and the four western South American countries (Ecuador, Peru, Bolivia and Chile), Panagra participated in carrying almost 75% of the total traffic in the 1952-1956 period and about one-half of the total in 1957. Between the United States and the seven eastern South American countries (Venezuela, Brazil, British Guiana, French Guiana, Surinam, Paraguay and Uruguay), Pan American alone accounted for about two-fifths of the total traffic during the period from 1952-1957. Between the United States and Argentina, Pan American and Panagra shared better than three-quarters of the traffic during the 1952-1957 period. Between the United States and Colombia, Pan American and Panagra (each serving different parts of that country) accounted for one-third of the total traffic in the 1952-1957 period, while the foreign flag traffic was three-fifths of the total. However, practically all of this foreign flag traffic is carried by Avianca.

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17 According to Pan American there are at least 18 foreign airlines operating between the United States and South America or Panama.

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Pan American has submitted evidence and expert testimony on the relevant markets and area of effective competition. Some of its statistics, however, include sea passenger traffic added to the air traffic, thus considerably diluting the percentages testified to by the government economist and supported by its statistics. This was done in a post-trial brief based upon certain evidence the government submitted insofar as the complaint related to Grace. We reject this combination of air and sea traffic figures as not close substitutes and not truly the same relevant market.[18] It is significant, too, that at the trial Pan American's expert witness and employee produced no statistics from their own records showing the share of air passenger traffic by Pan American or Panagra in any relevant market.

Accepting the government's evidence and rejecting Pan American's as deficient, we find that there is and has been for many years active substantial competition between Pan American and Panagra in the transportation of air passengers to the United States and South America to a substantial degree and that, but for the Pan American suppression of Panagra, that competition would have been much greater.

Finding, as we do, the existence of such competition the next inquiry is whether defendant Pan American monopolized or attempted to monopolize such trade and commerce. We find that it did both.

We need not discuss alleged violations of §1 of the Sherman Act in this part of the opinion. We have heretofore found no conspiracy between Grace and Pan American to restrain or monopolize, and we concluded in substance that their original joinder was not a combination in restraint of trade; we found that their combination was a legitimate one with legal ends—to foster the development

18 Cf. *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594, 612 n. 31.

of a new form of transportation. That the combination, or joint enterprise subsequently developed differences of opinion as to the growth and development of their jointly owned company does not, in our opinion, operate to make their joinder or combination, *in limine*, one in restraint of trade, or their combination presently, *qua* combination, one in restraint of trade.

The antitrust restraints that we find here requiring judicial remedy were unilaterally imposed by Pan American and for that reason, if they are illegal at all under the Sherman Act it must be under §2 thereof. More specifically, they must constitute monopolization or attempt to monopolize.

In our opinion, Pan American's successful blocking of Panagra's extension to its own terminal in the United States constitutes an unlawful exercise of the power it had to exclude Panagra as a competitor in the United States-South American market, and to thereby maintain its virtual monopoly position over that market at least until the entry thereinto of Braniff in 1948. Thereafter and to date, it remains the dominant carrier in that market and maintains its power to participate in substantially all United States origin or destination traffic carried by Panagra through its continued suppression of a Panagra-United States extension.

While we were not provided with any statistical breakdown of the passenger traffic carried by air between the United States and South America for the years prior to 1950, it is clear that Pan American and Panagra's share was 83% or better. And it is safe to say that prior to 1947 substantially all such traffic was carried by Pan American alone. It was not until then, 1947, when the C.A.B. approved the Through Flight Agreement, that Panagra planes actually flew beyond the Canal Zone to the United States; but then it was only in participation with Pan American pursuant to such agreement.

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Since 1938 half of Panagra's board of directors (Grace nominees) sought to file a voluntary application with the C.A.B. for an extension of Panagra's routes to the United States. Pan American would not consent to such action and directed its nominees on Panagra's board accordingly, because "it would not be in the interest of our stockholders [Pan American stockholders] for our directors to authorize an application by [Panagra] to extend north of [the Canal Zone] in competition with Pan American."

Pan American has never retreated from this position which is predicated upon the proposition that Panagra is part of the Pan American system; that it (Panagra) was so set up to be the west coast link of the Pan American system, and that if it were permitted to extend to a United States terminal its character would be changed to that of a competitive carrier. Pan American has expressed the fear that if Panagra were permitted its own route to Miami the effect upon Pan American's service between the Canal Zone and Miami would be disastrous, because the greater portion of Pan American's traffic between those points on its direct flights was traffic destined to or originating at points on Panagra's routes. Generally, all through traffic between points on Panagra's west coast route and Miami or other United States cities conveniently reached through the Miami gateway would be almost wholly diverted from Pan American. The same would go for most any west coast traffic bound for a United States point conveniently reached from any United States terminal to which Panagra may be certificated, whether it be Miami, New Orleans, New York or any other city.

It is beyond dispute therefore, that Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes. Prior to Braniff's entry into the market (and Delta's too), and prior to the Through Flight operations, Pan American en-

joyed a virtual monopoly of the United States-South American market. We assume that it had come by that monopoly legally however, originally; but we find that it maintained that monopoly illegally, in contravention of the Sherman Act when it utilized its stockholdings and representation thereunder on Panagra's board of directors to frustrate Panagra's entry into the market. Pan American's justification for its blocking actions is bottomed upon a fallacious predicate; Panagra is *not* part of the Pan American system except to the extent that it is reduced to that status through the subjugating exercise of Pan American's negative control over its destiny. Panagra is not a subsidiary of Pan American; its co-equal stockholder, Grace, never so intended it to be (and never intended to be a mere investor in Panagra), nor has Panagra's abstention from independent entry into the United States-South American market been the result of *concerted* action between it and Pan American. If Pan American were the majority shareholder in Panagra or if Panagra were a wholly owned subsidiary of Pan American it might make a decisive difference in this case. Cf. *Report of the Attorney General's National Committee to Study the Antitrust Laws* (1955), pp. 32-34. If Panagra were wholly owned by Pan American we have no doubt that its extension to a United States terminal would have been effected decades ago.

Pan American, to be sure, has contributed substantially to the success of Panagra within the territorial limits to which Pan American has permitted its operations. Pan American has always considered Panagra as part of the Pan American system, and its major premise is that its capital investment in Panagra was dedicated to a limited operation on the west coast from the Canal Zone south.

Panagra, however, is an independent entity and the dedication of American taxpayer money,[19] without which it could

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19 See footnote 14 *supra*, also, *Local, Feeder and Pick-up Air Service Case*, 6 C.A.B. 1, 3.

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not have survived as Pan American so readily argues, is paramount to any private investment consideration due Pan American. It most certainly must have been thought by this government that it was subsidizing two air transportation companies to develop the South American markets, each with equal opportunities in time to operate to this country and not necessarily by parallel routes.

If the competitive effect of a Panagra extension to the United States would have been as disastrous as feared by Pan American, it would have been a genuine issue for it to urge before the C.A.B. in opposing such extension which that body would have to weigh together with the public convenience and necessity in favor of the extension. Pan American then and since has arrogated to itself the function of determining what the public convenience and necessity requires. The economic arguments advanced by Pan American to justify its actions in preventing Panagra's extension to the United States are irrelevant to the issues of this case. Its intentions in excluding Panagra from that sector are beyond doubt.

While we have discussed the market which we find Pan American has monopolized or attempted so to monopolize, as the United States-South American sector of air transportation of passengers by all carriers, foreign and American, there is a more limited market over which Pan American has maintained a more complete monopoly and which would appear to be one that may be appropriately considered separately. That is the United States-Canal Zone sector of air transportation. Under the Civil Aeronautics Act such transportation would be deemed "overseas" transportation, as distinguished from "foreign" transportation, and as such would be reserved exclusively to United States flag carriers. Cf. *Pan American-Matson-Inter-Island Contract, supra.*

Prior to Braniff's certification and entry into this market, Pan American was the sole United States carrier therein.

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Its actions in suppressing and thereby excluding Panagra from the United States terminal to which Panagra aspired are equally applicable to a consideration of this more limited market, and compel the same conclusion of monopoly or attempted monopoly.

Pan American argues that under the C.A.A. exclusive control over the entry into the market is vested in the C.A.B. and the President (§§401 and 801, 49 U. S. C. 481 and 601) and that, therefore, it does not have power to exclude competitors, i.e., monopoly power. It does not and cannot deny, of course, that it has the power to and has effectively excluded Panagra from the market in question.

In our opinion, under the circumstances of this case Pan American need not have the affirmative power to ultimately approve Panagra certification for its own route to the United States to qualify as a monopolist. What Pan American seeks to do is to confound power of admission with power of exclusion. It is the exercise of the latter that the Sherman Act condemns.

We would like it clearly understood that it is not our opinion that every defendant who exercises similar negative control over a single potential competitor and thereby excludes such competitor from a relevant market necessarily monopolizes thereby. It is a relative concept which can only be applied in a given context. Here, the excluded competitor is the most potential of a very limited number of competitors and one that enjoys a substantial share of the relevant market, and in which share the exclusionary action of Pan American guarantees it participation. One result is that competition between the two for their significant shares of the market is to a substantial degree restrained. Other factors we considered are the nature of the industry, the size and strength of the two companies involved, and the limited market potential.

We feel that the affirmative blocking of a Panagra application to the C.A.B. is sufficient under the facts pre-

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sented to make out the violation by Pan American of monopolization and that the following history of Pan American's actions gives a definitive picture of its 20-year subjugation and restraint on Panagra. It will also show the attitude of the C.A.B. and its consequent frustration towards Pan American's antagonistic and purposeful restraint.

We start with 1938, the turning point for United States flag international aviation. With the enactment of the C.A.A. that year the period of foreign airmail contracts ended; under the Act mail pay or subsidy was to depend, not upon contract, but upon the needs of each certificated carrier in contributing to the maintenance and development of air transportation. In accordance with the objectives set out in §2 (49 U. S. C. 402) thereof, in sum, to promote an economically and technically sound air transportation system, the C.A.B. was authorized to prescribe the extent of air transportation which each certificated carrier may engage in, and to allow for regulated and economic competition designed in part to stimulate research and experimentation and to induce refinements which would inure to the benefit of the foreign and domestic commerce; the Postal Service and the national defense.

A policy of regulated competition replaced the "no-parallel" policy of the first decade, and with it and the new policy with respect to subsidy, it became feasible for Panagra to seek to extend its routes to the United States. Such an extension would give it direct access to one or more of the major gateways for through traffic between the United States and Latin America and was entirely normal and desirable from Panagra's viewpoint as it would then no longer be so dependent upon connections with Pan American at the Canal Zone for onward passage of a large part of its traffic travelling between the United States and the west coast of South America and Buenos Aires. See *Panagra Terminal Investigation Case, supra,* at 671. However, such an extension of Panagra represented a serious com-

petitive threat to Pan American which ran counter to the latter's philosophy that it alone should conduct all international commercial air transportation operations under the United States flag, a philosophy which Pan American unavailingly urged upon the C.A.B. whenever competition for Pan American was proposed. See e.g., *American Export Airlines, Inc., Trans-Atlantic Route Service Case*, 2 C.A.B. 16; *Northeast Airlines, Inc., North Atlantic Route Case, supra* at 324; *Latin American Air Service Case, supra* at 861, and *Hawaiian Airlines, Ltd., Hawaiian Case*, 7 C.A.B. 83, 103.

Grace's efforts of 1938 to secure Pan American cooperation for a northern extension of Panagra resulted in a compromise embodied in an agreement dated February 14, 1939, whereunder Grace nominees succeeded to the presidency and management of Panagra, Pan American promised to provide an adequate connecting service between Miami and the Canal Zone,[20] and Grace was to cease agitating for the United States extension of Panagra. However, in late 1940 Grace again pressed the question of Panagra's extension because at that time American Export Lines was evidencing an interest in a New Orleans-Canal Zone service which Grace feared might eventually extend down the west coast in competition with Panagra. Grace's suggestion that Panagra file an application with the C.A.B. for this route was rejected by Pan American which, incidentally, had already filed its own application therefor. Pan American further decided that its nominees on the Panagra board would not attend any meetings at which this subject was to be discussed. Thereafter, Grace brought the matter before the C.A.B. and that body ultimately instituted a proceeding which became known as Docket 779, the Panagra Terminal Investigation. The intermediate

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20 Pan American's connecting service was a source of much friction between defendants and its alleged inadequacy gave rise also to threats by Grace to inaugurate its own air transportation service between Miami and the Canal.

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steps are set out chronologically in the C.A.B. opinion in the case as follows:

"When efforts to secure the filing of an application by Panagra failed, Grace, on May 3, 1941, filed a petition for leave to intervene in the *New Orleans* case alleging that since Panagra was not filing an application Grace proposed to file an application in its own behalf for a certificate for a route between the United States and the Canal Zone. Grace was granted leave to intervene, but did not file an application for a certificate during the time that case was pending.

"On December 16, 1941, Grace filed a petition and complaint, Docket No. 707, requesting the Board to institute a proceeding pursuant to section 401(h) of the Act to alter, amend, and modify Panagra's certificate of public convenience and necessity so as to make the northern terminal of its route a point in the United States such as Miami or Tampa, Fla., or New Orleans. On April 29, 1942, Grace filed a second complaint, Docket No. 744, requesting the Board to require Pan American Airways Corporation, pursuant to section 411 of the Act and sections 7 and 11 of the Clayton Act, to cease and desist from certain matters alleged by Grace to be in violation of those sections, and to divest itself of its ownership of the stock of Panagra to the extent necessary to divest itself of its present negative control of Panagra; and also renewing its request in Docket No. 707.

"No formal steps were taken by the Board in connection with the Grace petitions in Dockets Nos. 707 and 744 until September 1942. During this period all action in the *New Orleans* case also was postponed under the Board's policy, announced December 12, 1941, of suspending further action in all proceedings pending before it under sections 401(d) and 401(h) of the Act 'in order that the immediate and maximum attention of air carriers and their personnel, and that of the Civil Aeronautics Board, as well as other Government agencies concerned, may be available for the most efficient discharge of the emergency demands' arising out of the war.

> "However, the Board did explore the possibility of working out a voluntary settlement of the controversy between Pan American and Grace. Numerous conferences were held by the Board with both parties. Finally, the Board suggested that the parties enter into an agreement under which sufficient shares of the two stockholders would be transferred to an independent public voting trustee or trustees to permit the election to the Panagra board of an independent director or directors, or under which such an independent public director or directors might be otherwise appointed, who would be able to break the deadlock resulting from the equal division of the ownership of Panagra stock between Pan American and Grace. After it became apparent that no satisfactory voluntary arrangement could be mutually agreed upon by the parties and that all efforts to mediate the differences between them would be unsuccessful, the Board, on September 10, 1942, * * * [instituted Docket 779]" 4 C.A.B. 670, 671-72.

In May, 1944, the C.A.B. dismissed the proceeding without reaching the merits of the question of the public convenience and necessity involved in a Panagra extension. The dismissal was on the ground that the Board was without power to compel such an extension in the absence of a voluntary application from Panagra. The Second Circuit Court of Appeals, *W. R. Grace & Co.* v. *C.A.B.*, 154 F. 2d 271 (1946), reversed the C.A.B. and remanded the proceeding saying: "if Grace * * * could prove that the opposition of Pan American * * * to Panagra's applying for an extension was due to 'illegality and fraud' it would follow that this proceeding should be regarded as a voluntary application for the extension" (pp. 281-82). On June 10, 1946, the Supreme Court granted Pan American's petition for certiorari, 328 U. S. 832.

In the meantime, in consolidated hearings, the C.A.B. had been considering a number of applications by carriers seeking, *inter alia*, certificates to engage in operations between the United States and the Canal Zone. The C.A.B.

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Examiners and its Public Counsel reported that while the extension of Panagra to a terminal in the United States would best serve the public interest they considered such recommendation to be foreclosed by the decision of the Board in Docket 779, and consequently, they recommended that routes between the United States and the Canal Zone be awarded to other carriers. The brief of the Public Counsel noted, in substance, that Panagra was entitled to a certificate for a United States-Canal Zone route which would provide the west coast countries in South America with the convenience of one-carrier service to the United States, but since the action of Pan American prevents the recommendation of the "best possible service, we must turn to the next best solution." *W. R. Grace & Co.* v. *C.A.B.*, *supra*, p. 282 n. 5.

Nevertheless, the C.A.B. thereafter divided evenly on the question of authorizing other carriers to South America and for want of a majority, additional services between the United States and the Canal Zone also failed. The President thereafter directed the Board to provide for the extension of an additional carrier to South America and Braniff was ultimately selected. In the course of its opinion the C.A.B. had occasion to say that it had long recognized the desirability of a voluntary application which would permit a determination by it of the question of extending Panagra from the Canal Zone to a point in the United States, and that if such extension were made to Miami or New York, or some other point on the eastern seaboard, the eastern part of the United States would be afforded a fast direct service to the west coast of South America and to Buenos Aires. The Board declared that Pan American and Grace, in the public interest, "cooperatively should enable Panagra to apply for access to the east coast of the United States." *Latin American Air Service Case, supra,* at 914.

Thus, while it is true that the C.A.B. has never explicitly stated that it would grant an application if one were volun

tarily presented by Panagra, it is unrealistic to suppose that it would not have. We find it difficult to conclude otherwise than that the Board waited in vain for such an application, or stated differently, for Pan American to cease blocking Panagra in the interest of the public welfare.

Braniff's certification was in May, 1946. Pan American and Panagra entered into the Through Flight Agreement in July, 1946. Under this agreement Pan American theoretically charters Panagra planes on flights north of the Canal Zone. Actually, what Pan American does is to share with Panagra in the expenses and profits of such flights by Panagra planes flying over Pan American's routes.* After the Board certificated Braniff, Panagra was faced with two alternatives: (1) to enter into the Through Flight Agreement and immediately improve its competitive position with Braniff, or (2) continue to press for its own certificates. Under the latter course Grace, on behalf of Panagra, would continue the litigation which it had initiated before the C.A.B. in 1941 which was then pending review by the Supreme Court on certiorari to the Second Circuit.

The outcome of the appeal of course was uncertain, and assuming it were favorable to Panagra, the matter would still then have to return to the C.A.B. for a consideration of the merits of the action. Panagra simply could not afford the delay which this course of litigation would entail. Its economic life hung in the balance. If Panagra did not get to the United States, at least by way of a through flight interchange agreement with Pan American, and if Braniff commenced such operations under the authority granted by the Board, Panagra's economic position would rapidly deteriorate. Cf. *New York-Balboa Through Service, Reopened*, 18 C.A.B. 501, 505.

Grace and Panagra succumbed to the restraint of Pan American and acquiesced in the Through Flight Agreement.

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* In 1955 the C.A.B. approved an interchange agreement among Pan American, Panagra and National Airlines under which Panagra's planes fly to New York from Miami over National's routes.

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The C.A.B. approved the agreement in May, 1947;* it did not approve the suppression of Panagra by Pan American in the process as Pan American contends. Such approval was in no sense necessary to do that which was authorized. (See further discussion re Pan American's claim of immunity *infra*, page 52.)

The loser of course, as always, was the public. Braniff has proved to be an ineffective competitor; the United States share of the market has declined; foreign competition has increased, and the federal subsidy has greatly increased.[21] The C.A.B. has expressed a fear for the economic effects of a successful conclusion of this suit by the Attorney General, and the emergence as a consequence of an independent Panagra in South America. *New York-Balboa Through Service, Reopened, supra.* It should be noted that in 1957 Grace, on behalf of Panagra, filed with the C.A.B. applications for Panagra's own routes to Miami, New York and to the west coast of the United States. Action thereon is suspended pending the outcome of this suit.

Pan American has monopolized or attempted to monopolize the market in issue and in the process has seriously restrained competition from Panagra and caused the creation of a situation that cannot be righted so long as it retains the negative control that it now possesses over Panagra.

Pan American's conceptions of the perpetual limited character of Panagra operations are now and ever have been based on its own unilateral intentions in joining with Grace to form a west coast airline. That intent, and the economic

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* On November 24, 1947, on Pan American's motion the Supreme Court dismissed the writ of certiorari previously granted, as moot. 332 U. S. 827.

21 In 1946, Pan American's Latin American Division showed a profit of $2 million and in 1953 it required $11 million subsidy; Panagra in 1946 required just under $1 million which rose to over $2 million in 1953; Braniff required about $560,000 in 1948 and its break-even need in 1953 was over $3 million. *New York-Balboa Through Service, Reopened, supra* (concurring opinion).

arguments which it has advanced in its brief against Panagra's extension to the United States are no defense to the monopoly charges *sub judice*. Its economic arguments would have been proper to urge before the C.A.B. upon hearings on the merits of an application by Panagra for such extension. While Pan American's conduct in preventing Panagra from clearing the first hurdle for that extension, to wit, presentation of an application to the C.A.B., may be understandable from a selfish business standpoint of one faced with making a choice, nevertheless the quandary was of Pan American's own making and its choice was unlawful.

Pan American Immunity

Pan American asserts that it is immune from antitrust violations because the Civil Aeronautics Board approved the arrangements made between it and Grace respecting the area of Panagra's operations. It points out that in 1947, again in 1950 and again in 1955 the C.A.B. approved the Through Flight Agreement between Pan American and Panagra and the related Parent Company Agreement between Pan American and Grace. It states that the approval was given after a most thorough inquiry from which it appeared abundantly clear that the Through Flight Agreement was in lieu of Panagra's coming to the United States and represented a reconciliation and settlement of the controversy between Pan American and Grace over Panagra's coming to the United States.

It relies on §414 of the C.A.A. (49 U. S. C. 494) which relieves any person affected by an order of the C.A.B. made under sections 408, 409 or 412 (49 U. S. C. 488, 489, 492) of the operations of the antitrust laws.

The claim of immunity is without substance because no such approval was ever sought or obtained from the Civil Aeronautics Board.

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What the Board approved was in effect an interchange agreement between Pan American and Panagra which was completely silent with respect to the problem here involved and a related management agreement which contained, among other things, a provision that Pan American would consent to a Panagra application for service to the United States in the event of transfer, modification or cancellation of Pan American's own certificate. This provision consenting to an extension in the event of the contingencies described did not negative consent under other circumstances or in terms constitute an undertaking or an understanding that Pan American would continue to block Panagra's efforts for expansion.

One of Pan American's principal officers testified, "There was nothing in the agreement • • • to prevent Panagra from applying for an independent franchise to enter the United States" and that there was no side agreement or understanding to that effect. He was specifically asked, "Is it understood between the parties that Panagra will not so long as this contract is in effect apply for such independent entry?" He answered, "No." The president of Panagra when asked whether the agreement implied "that those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States," he replied, "I do not so testify and that is not the fact. The only agreement between us on that point is in these papers."

Not a word in the opinion of the Board (8 C.A.B. 50) approving the agreements is devoted to this question, nor is there any basis for an inference that it understood that it was approving a prohibition against Panagra's seeking an independent franchise.

The Board's approval of the Parent Company Agreement was only in relation to the interchange agreement. It was done in order to prevent avoidance of its jurisdiction over contracts affecting air transportation (and which would

be subject to approval if made by operating carriers) through the device of their being made by parent companies not in themselves operating carriers and whose contracts would not normally be subject to the Board's approval.

Since the contracts do not specifically provide that Panagra should not seek its own certificate and the parties themselves testified that the contracts should not be so construed the Board cannot be held to have approved and granted antitrust immunity to Pan American to use its negative control over Panagra to prevent its applying to the Board for its own certificate to fly to the United States, nor has it ever approved or granted antitrust immunity in relation to Pan American's and Grace's control over Panagra. This control antedates the Civil Aeronautics Act and is beyond the purview of §408.[22] Exemptions from the antitrust laws are not favored and should be accorded only on a showing of compliance with the precise manner and method prescribed by Congress. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 226-27. This has not been done.

Primary Jurisdiction

Pan American in its post-trial brief has raised the defense of primary jurisdiction. It argues after trial that the allegations of the complaint are within the jurisdiction of the Civil Aeronautics Board and the President. Therefore, the court should not decide the matters in issue until after the Board and the President have acted.

The primary jurisdiction rule is, "a principle, now firmly established, that in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not

22 *Railroad Control of Northeast Airlines*, 4 C.A.B. 379, 386; *National Air Freight Forwarding Corp.* v. *C.A.B.*, 197 F. 2d 384, 389 (D. C. Cir. 1952).

[fol. 5575]

be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure." *Far East Conference* v. *United States*, 342 U. S. 570, 574-575.

Whether or no such defense should have been raised by motion or by answer in accordance with Rule 12 F. R. Civ. P. when the complaint was served six years ago is academic since we find it without merit. Parenthetically, although of no legal significance, this latest tactic of Pan American is characteristic of its litigious nature and of its determination to continue and persevere in its restraint on Panagra.

There can be no question that only a United States District Court has jurisdiction in actions under the Sherman Act, and that the Civil Aeronautics Board does not (15 U. S. C. 4). The necessary defendant W. R. Grace and Company, not being an air carrier, would not ordinarily be subject to the jurisdiction of the Board, except perhaps on the question of acquisition of control and management of an air carrier. See note 13 *supra*.

In *S.S.W., Inc.* v. *Air Transport Ass'n of America*, 191 F. 2d 658, 661-62 (D. C. Cir., 1951) the court analyzed the approach to accommodation of court and agency roles in the following language: "[I]n each case brought against a regulated company under the antitrust laws, the subject matter and remedy afforded by the regulatory statute are compared with that of the antitrust laws. If the latter either cover subject matter outside the scope of the Com-

[fol. 5576]

mission's power or provide a remedy which the Commission may not give, then they remain in effect to that limited extent. This sort of approach gives the greatest possible effect to congressional intent. It subjects problems intended to be dealt with in a uniform manner within the framework of a particular industry to the agency empowered to regulate that industry. At the same time, it gives effect to the antitrust laws in those areas not carved out from them by more specific economic regulation."

The complaint in this case relates to many matters that existed prior to the creation of the C.A.B. and over which the C.A.B. would have no jurisdiction. In addition, the major relief prayed for in the complaint is that the court order Pan American and Grace to divest themselves of their stock holdings and other interests in Panagra. Such relief or the power to grant it is not vested in the Civil Aeronautics Board as to pre-1938 acquisitions[23] and such power exists only in a court of equity. In fact there is no provision in the antitrust laws for such a drastic remedy. *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 602.

Applying the suggested test in *Air Transport Ass'n*, it is clear to us that so much of the subject matter in the government's complaint is outside the scope of the Board's power and it seeks a remedy which the Board may not give, that Pan American's argument and motion, if it is a motion addressed to the primary jurisdiction of the Board, must be and is denied.

As a practical matter this case is here because the Civil Aeronautics Board found itself powerless to act and requested the Attorney General on two occasions to institute this suit.

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23 See note 22 *supra*.

[fol. 5577]

Claim of *Per Se* Violation by Grace

The government contends that the Sherman Act makes unlawful the mere ownership or control by a steamship company of an airline operating a parallel route.

Leaving aside for later discussion the factual questions whether or no Grace competes with Panagra and whether Grace has in any respect exercised any restraint on Panagra, it is undisputed that Grace owns the Grace Line and that it carries the bulk of passengers who travel by sea between the Atlantic coast of the United States and the west coast of South America.

The government stakes its claim of *per se* violation on a series of railroad cases relating to mergers of competitive transportation companies and a district court case in Hawaii. The railroad cases the government relies on are *Northern Securities Co.* v. *United States,* 193 U. S. 197; *United States* v. *Union Pacific R.R. Company,* 226 U. S. 61, and *United States* v. *Southern Pacific Company,* 259 U. S. 214. We hold that these cases are inapposite. In *Northern Securities Co.* the problem related to the acquisition by banking interests through a holding company of the controlling interest in Northern Pacific Railroad and the Great Northern Railroad, which systems operated parallel lines through the northwest. Actually the roads served different geographical areas although they had common termini and the actual competition between the two was small. The Supreme Court in striking down the arrangement held that (p. 327), "[t]he mere existence of such a combination and the power acquired by the holding company as its trustee, constitute a menace to, and a restraint upon that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected." In *Union Pacific* the Supreme Court again held that the consolidation of two great competing railroads by a transfer to one of a dominating stock interest

[fol. 5580]

Metzger's order and the entry of a contrary ruling. The government has in effect conceded this.

At the subsequent trial the court (Driver, *J.*) instructed the jury: "You are instructed that it was not per se in and of itself an unreasonable restraint of trade or commerce for Inter-Island, a surface carrier, to organize and assume control of Hawaiian, an air carrier operating over parallel routes." The jury returned a verdict for Hawaiian and Inter-Island and the court entered judgment dismissing Trans-Pacific's counterclaim.

There is, however, another case in the District of Hawaii in which, the government agrees, the "precise issue" was raised but a contrary conclusion arrived at, i.e., contrary to Judge Metzger's. This is *United States* v. *Inter-Island Steam Nav. Co.*, 87 F. Supp. 1010 (D. Hawaii, 1950). In that case Judge McLaughlin stated the issue as follows: "Is there a violation of the Sherman Anti-Trust Act in the mere organization and control of a subsidiary air common carrier by a water common carrier for the purpose of having the former transport passengers over routes substantially paralleling the latter's routes and serving areas substantially similar to those served by the latter?" (p. 1014).

In coming to a conclusion diametrically opposed to that of Judge Metzger, Judge McLaughlin held: "There is nothing in the statute to prevent a corporation from entering a virgin field, and, through a subsidiary or otherwise, engaging in a pioneer enterprise. That was precisely what was done in 1929 by Inter-Island in the instant case. The antitrust laws were enacted to promote and not to retard the economic growth of the nation. In a word, the Sherman Act is not an instrument of stagnation. The Supreme Court repeatedly has given a clean bill of health to 'an expansion to meet legitimate business needs'" (pp. 1016-1017).

The government's *per se* argument seeks to succor support from the various Congressional Acts relating to the

[fol. 5581]

control of interstate commerce, and more particularly, §408(b) of the Civil Aeronautics Act, 49 U. S. C. 488(b), and from a number of administrative decisions under those acts.

But we are here concerned with the question of Sherman Act *per se* illegality and it seems to us that statutes relating to the jurisdiction of administrative agencies to approve or disapprove, *inter alia*, acquisitions of control by surface carriers of air carriers, *provided* such acquisitions do not restrain competition, are irrelevant. Especially is this so, we feel, where the particular acquisition with which we are concerned was at no time subject to the provisions of those statutes. *Railroad Control of Northeast Airlines, Inc., supra; National Air Freight Forwarding Corp.* v. *C.A.B., supra.* We hold, therefore, that it was not, and is not, *per se* violative of the Sherman Act for Grace to acquire and now own 50% of Panagra's stock.

Grace Line's Competition With Panagra

The government has submitted evidence in support of its charges that there is active passenger competition between Panagra and Grace Line as between the continental United States and the west coast of South America. It also called witnesses and introduced some statistics to prove that at the present time there is an area of competition between them, and ships and airplanes generally with respect to cargo, and that within the near future this competition will greatly increase.

Speaking broadly, steamship transportation and air transportation are in some measure competitive, though the government frankly admits that services rendered by airplanes and ships are distinct and that each has its own inherent advantages. But that they are competitive in some sense does not resolve the problem. We think everyone will concede that a passenger by sea from New York to

Even adopting the statistics of the government as showing substantial passenger competition between Grace Line and Panagra, there is no proof nor could we find that the passengers thus carried by ship were potential air passengers or that they were passengers whose needs or desires could only be met by sea transportation.[24] Air transportation is quick, efficient and functional transportation for passengers over long distances. Steamship companies cater to those who have the leisure and inclination for a sea voyage. They are not, under the proof submitted, two forms of transportation "reasonably interchangeable" and do not make up a single market.

We hold, too, that the same reasoning applies with respect to cargo traffic. The airlines cater to traffic that demands high speed transportation of either relatively small lightweight shipments or heavier shipments where the cost of transportation is not a factor or an important factor. Steamships on the other hand meet the need for low cost transportation of all kinds of commodities, particularly those which are heavy or bulky.

It is true that the government has submitted evidence tending to show that the air cargo field, particularly as it relates to heavy cargo, is on the upswing and that possibly in the future it will present an effective reasonably interchangeable service with sea cargo carriage.

We were furnished no statistics of any substantial value to show a relevant market. A few instances were shown where Panagra carried cargo between the same points as Grace Line did. However, there was no evidence of the rates or other factors. The sum total of the evidence shows that as between the two the volume of cargo carried by Panagra as compared to Grace was minuscule. The most the government experts and the witnesses connected with transportation by air who testified on its behalf showed

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24 Cf. *Latin American Air Service* case, *supra* at 867.

[fol. 5585]
was that indications are that there is developing *some cargo* competition between Grace and Panagra, and between shipping companies and airplane companies, i.e., in some situations it may be competitive. What was clear is that all-cargo air transportation is in an experimental stage and most of the operations are marginal at best.

But the government does not prove violations of the antitrust law by showing that Grace Line competes with Panagra, assuming that it does. It must show that Grace has restrained or monopolized trade or commerce, or attempted to do so. This the government has not done. When Grace entered the virgin field of air transportation in 1929, through Panagra, it was the dominant surface carrier to the west coast of South America. Its entry at that time was not illegal. Through defendants' efforts and with the help of this government Panagra became and remains the dominant air carrier in that area, not through unlawful efforts of Grace or Panagra. If anything has been established it is that Grace has been the only one of Panagra's two partners that has persistently and continuously attempted to improve its service and extend its routes to the United States. Not only has it not prevented the development of Panagra but absent its continuous objections to Pan American's restraints this case would not be here.

Panagra

The case against Panagra may be divided into three categories, (1) the alleged unlawful acquisition of stock in competing airlines and consequent restraint; (2) by reason of its dominant power in air transportation it allegedly has impeded development of competition between it and Braniff, and engaged in restrictive practices to restrain and impede Braniff from utilizing airports, terminals and other facilities in South America, and (3) price fixing.

in the other created a combination which restrained interstate commerce. In the *Southern Pacific* case, the court again condemned as a menace to freedom of commerce the combination, and resulting unified control, of established and naturally competitive rail systems, springing from the formation of holding companies rather than as a result of normal and natural growth (p. 230).

None of these cases presents a situation comparable to Grace's interest in Panagra in 1929 but rather, involve combinations of railroad giants of many years existence where the obvious purpose was to eliminate competition. It is apparent that the principle upon which these cases were decided applied to combinations of existing companies which were in substantial competition with one another prior to their combination. Cf. *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 531; Handler, Industrial Mergers and the Antitrust Laws, 32 Columbia Law Review 179, 212; Friedmann, Antitrust Law and Joint International Business Ventures in Economically Underdeveloped Countries, 60 Columbia Law Review 780.

In 1929 Grace's 50% ownership in the joint enterprise to establish a system of transportation which did not theretofore exist and which participation appears to have been of considerable importance in the decision of the Postmaster General in awarding Panagra the mail contract for the west coast of South America is, to our mind, not a *per se* violation of the antitrust laws. Except for the district court decision in Hawaii discussed hereafter there never before has been such a holding and the history of Grace's 50% participation in Panagra has not demonstrated any result thereof that must form the basis of a *per se* doctrine, i.e., that Grace's half ownership in Panagra from its very nature must result in restraints injurious to the public. Grace's stock ownership in Panagra cannot be said to have such a "pernicious effect on competition and lack of any redeeming virtue" as to conclusively presume that ownership to be an unreasonable restraint on trade and commerce.

[fol. 5579]

Northern Pacific Railway Co. v. *United States*, 356 U. S. 1, 5.

The government originally relied on *Hawaiian Airlines, Limited* v. *Trans-Pacific Airlines, Ltd.*, an unreported case (Civil 817, D. Hawaii, 1949), as an authoritative decision on the "precise issue." We surmise that the government no longer places such reliance on this case. Actually it was an oral decision of two sentences by Judge Metzger on a motion for summary judgment. In that case the Inter-Island Steamship Navigation Co., Ltd., had been operating a steamship service in the Hawaiian Islands from 1883. In 1927 Hawaii passed a statute designed to encourage the organization of an air carrier within the territory by creating certain tax exemptions. In 1929 Inter-Island organized the Hawaiian Airlines. Having failed to interest the public in a subscription of the air carrier's stock, Inter-Island took up the majority of the shares and from 1929 through the early 1950's both the ship and air operations were carried on by it. During the same period its steamship operations were curtailed considerably. In 1947 Trans-Pacific Airlines, which also operated in the area, filed a triple damage counterclaim under the Sherman Act against Hawaiian and Inter-Island, alleging the mere ownership of the airline by the steamship company violated that law. At the conclusion of the arguments on a motion for summary judgment the court rendered the following decision from the bench: "It is my firm opinion that the creation of Hawaiian by Inter-Island to operate over routes that were parallel to its own operation at a time when it is said that there was no air carrier competing in any way with Inter-Island that that was a violation of the antitrust laws of the United States. I am convinced that that is so by the weight of the interpretations put on the act and the motion for summary judgment * * * by the Trans-Pacific Airlines is granted in conformity with this conviction."

Grace has called our attention to the fact that further proceedings in that suit resulted in a revocation of Judge

any port on the west coast of South America has bought and hopes to enjoy a commodity or service substantially different from an air journey to the same place. In the first place the time element is so vastly different, e.g., from New York to Santiago by air takes today about 12 hours—by steamer 20 to 21 days. Steamer is also more expensive. The Panagra fare from New York to Lima, for example, depending on tourist or first class, ranges from $308.80 to $390.80; by steamer $515 to $1510 in the winter season, and $435 to $1220 in the summer season. Query: Are these interchangeable commodities? Does a substantial portion of the travelling public substitute one for the other with variations of rate and service? *Times-Picayune Publishing Co.* v. *United States, supra*; *United States* v. *E. I. du Pont de Nemours & Co.*, 351 U. S. 377. Is the passenger who is willing to spend six weeks on a steamer the same as a person who wants to fly somewhere and back in a hurry? Is the person who desires to transact business in a far away South American city and return a potential steamship passenger to and from the same city?

We are not persuaded that the proof in this case shows that the market is the same. This does not mean that we disagree with the Court of Appeals for the District of Columbia Circuit in *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289, which rejected the argument advanced by Lehman and Pan American that there was no competition between Pan American and United Fruit Line in the limited area of passenger tourist traffic going to the Caribbean area from the Gulf Ports of the United States. In that case the C.A.B. examiner had found that although the companies did not compete for tourist passenger traffic between all points of the Caribbean, both United Fruit and Pan American would be competing for tourist travel between the United States points and the same vacation travel area. Both the C.A.B. and the Court of Appeals adopted that finding as being logical and reasonable. In the instant case the market was not so narrowly defined nor was there proof of actual competition, aside from bare statistics.

[fol. 5583]

But assuming that the market is the same, let us examine the statistical evidence submitted by the government on the issue of the existence of substantial passenger and cargo traffic competition.

Not only does W. R. Grace and Company, the defendant, own the Grace Line, it has many interests, commercial, banking and manufacturing. The operating revenues of Grace Line for the year 1958 were less than one-fifth of its total sales and operating revenues. The only route of Grace Line that can be said to be in competition with Panagra is its Trade Route 2 between the Atlantic coast of the United States and the west coast of South America. It operates three other routes.

Trade Route 2, called Line A, provides regular liner service between substantially the same areas served by Panagra although it is not co-extensive, each serving areas not covered by the other. Line A accounts for one-fifth of Grace Line's total passenger revenues and for less than one-half of its freight revenues. One of the most important points of difference is that Buenos Aires is a city not served by Grace Line and is the most important city in South America served by Panagra. But we will assume this difference in geography would not be sufficient for a finding that they are not serving identical markets. They cater primarily to two different interests—Panagra sells passenger transportation predominantly whereas Grace Line's principal service is the carriage of freight. Between the years 1950 and 1958, Panagra carried less than four-tenths of 1% of the tonnage of cargo carried by Grace on its Line A.

Between the years 1950 and 1958 the ratio of passengers carried by Panagra and Grace was about 25 to 1 in favor of Panagra, e.g., in 1958 Panagra carried 128,776 passengers while Grace's Line A carried 4,347. During that same period Panagra's increase of passengers carried was 25% while Grace's volume remained substantially constant.

MICRO CARD
TRADE MARK ®

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MATTHEW BENDER & COMPANY

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microcard

[fol. 5586]

Much of the proof in support of these charges relates to matters long since resolved or matters within the special competence of the Civil Aeronautics Board. §§408, 411, 412, C.A.A. (49 U. S. C. 408, 491, 492).

The acquisitions complained of relate to Panagra's interest in LAB and Faucett, previously discussed. Today Panagra owns 21.5% of LAB stock and about 19% of Faucett. As pointed out above, Panagra acquired its stock interest in LAB at the specific request of this government and in aid of its de-Germanization program in South America in the early years of World War II. We have heretofore held in effect that such acquisitions involved no Sherman Act violations and in the subsequent years its minority interests have not been shown to be of any significance antitrustwise.

As to LAB, Panagra admits that its motives were not completely patriotic and concedes that it hoped there would be some economic benefits earned from its affiliation. After the war when its management contract with LAB expired, its influence and control decreased accordingly. It has only two nominees on a board of directors of six and LAB is in active competition with it on two route sectors in Bolivia.

With regard to Faucett, it and Panagra are in competition on the Lima/Talara sector of Panagra's international route. Panagra received its stock in Faucett when it sold Aerovias Peruanas which had been formed to help Panagra obtain cabotage rights in Peru. All of this has been well known to the C.A.B. Those provisions in its original agreement with Faucett that might be considered to be in violation of the antitrust laws were removed after the C.A.B. disapproved of the agreement in 1949. The amended agreement, which includes a provision for the Panagra stock interest and its two of the nine directors, was specifically approved by the C.A.B. in 1950.

[fol. 5587]

Also with respect to Faucett, it was the government's claim that Panagra, relying on its agreement with Faucett, prevented that carrier from entering into an interline agreement with Braniff. We are not persuaded. The most that the proof showed was that when Braniff attempted to make such an agreement with Faucett, Faucett refused. No evidence was offered to show that the refusal was at the direction or with the approval of Panagra. On the contrary, it was shown that Panagra was never consulted by Faucett on that question at all.

The government did prove, and proved conclusively, that in the late 1940's Panagra carried on a bitter and consuming price war with PIA, an alleged Peruvian air carrier. After unsuccessfully opposing PIA's certification as a foreign flag carrier it soon found that PIA was making serious inroads on Panagra's traffic by accepting payment for tickets to the United States in local Peruvian currency.

Panagra took up the challenge and it, too, accepted local currency. It lost money, but so did PIA. As Panagra so well states, "fare cutting is a chronic disease in the air carrier industry, and it is a very serious disease; PIA died of it." It expired in 1949.

The government also proved, without alleging so in its complaint, that prior to 1951 Panagra and Pan American participated in many price fixing arrangements. Exactly what the terms of these arrangements were is not shown but, reading between the lines, we are convinced that it was a common practice. However, in 1946, International Air Transport Association (IATA), formed for the purpose of setting rates for all its members in international air transportation, was approved by the C.A.B. and became effective as to United States-South America carriers in 1951. Panagra is a member—so is Pan American. The rates agreed upon at IATA conferences are approved by the C.A.B. pursuant to §412 of the C.A.A. (49 U. S. C. 492)

[fol. 5590]

cause on the 24th day of March, 1961, why such decree should not contain a provision directing it to divest itself of its stock in Panagra.

This opinion is filed in lieu of findings of fact and conclusions of law pursuant to Rule 52(a), F. R. Civ. P.

THOMAS F. MURPHY
U. S. D. J.

Dated, New York, N. Y., March 8th, 1961.

[fol. 5591] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 90-259

UNITED STATES OF AMERICA, Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

FINAL JUDGMENT—May 8, 1961

This case having come on for trial and the Court having filed its Opinion and Findings of Fact and Conclusions of Law on March 8, 1961 now therefor in accordance with the Opinion and Findings of Fact and Conclusions of Law;

It Is Ordered, Adjudged and Decreed:

1. This action is hereby dismissed with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc.

2. Defendant Pan American World Airways, Inc. shall divest itself of ownership of its stock in Pan American-Grace Airways, Inc. at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act.

3. Pending such time as Pan American World Airways, Inc. divests itself of its stock in Pan American-Grace Airways, Inc. pursuant to paragraph 2 of this judgment, it is enjoined from taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-

[fol. 5588]

and such agreements, pursuant to §414 of the C.A.A. (49 U. S. C. 494), are thus clothed with antitrust immunity. No proof was offered by the government relating to any such agreements after 1951, except that it did show that prior to conferences Pan American and Panagra would discuss prices and rates in violation of the rules of IATA. But since Pan American is Panagra's agent for such purposes with C.A.B. approval how else could it act?

The remaining charges relate to Panagra's opposition to Braniff and its stubborn resistance to lending a helping hand to a new competitor, Braniff; also to the petty and amusing instances of retaliation and business skullduggery. The government evidence seems to picture Braniff, an experienced carrier, as an innocent tyro in the air transportation business, being buffeted and barked at by Panagra. The government showed that even though Panagra was helpful and courteous to Braniff in its initial survey flights after it was certificated, it became pigheaded and uncharitable when it insisted upon being paid for the use of its facilities and supplies and services. We get the impression that Braniff wanted everything for nothing, including routes not certificated. The action of Panagra in trying to keep some of Braniff's employees out of the Rotarians and warning their employees not to fraternize with Braniff's employees, and bribing a South American petty official to turn over manifests in order to learn what passengers Braniff was carrying, are all colorful incidents but hardly add up to antitrust violations.

Not much more need be said other than to add that despite all of Panagra's restraints and restrictive practices against Braniff, Braniff continues to get its fair share of the South American traffic. Although Panagra has been in the market for 30 years and Braniff a little over 10 years it does more than half as much business as Panagra.

In short, all of the charges against Panagra relate to matters in the distant past or are minor incidents in a

fol. 5589]

highly competitive field. They are matters of doubtful antitrust significance and without present day consequences.

Instead of showing any Sherman Act restraints or monopolization by Panagra the proof convinces us that the competition is real and active and expensive to the American taxpayer and as the foreign competition increases it will become more expensive.

Defense of Laches

Finally, Grace and Pan American have interposed the affirmative defense of laches. In view of our disposition of the case against Grace we need only discuss this defense as it applies to Pan American, and as to it, the defense is untenable.

In the course of our opinion it was made to appear, we believe, that governmental efforts to alleviate the adverse effects of Pan American's restraints upon Panagra began as early as 1941 and continued thereafter even subsequent to the institution of this suit. Any delay in bringing this action was due to concerted efforts designed to work out a compromise and to thereby avoid suit if possible in the interests of all concerned including Pan American. It can hardly be said to be inexcusable delay and certainly no prejudice to it has been shown by Pan America.. as a result thereof.

Decree

In accordance with all of the foregoing, it is hereby ordered and decreed that the complaint, insofar as it relates to W. R. Grace and Company and Pan American-Grace Airways, Inc., be and is dismissed; and that the government is entitled to a decree in its favor as against Pan American World Airways, Inc. In order to fashion such final decree it is ordered that Pan American show

Grace Airways, Inc. to alter, amend, modify, or extend its routes.

Thos. F. Murphy, United States District Judge.

Judgment entered May 8, 1961.
Herbert A. Charlson, Clerk.

Dated: New York, N. Y.
May 8th 1961.

[fol. 5592]

UNITED STATES DEPARTMENT OF JUSTICE

Washington, D. C.

(Seal)

LL:WWK

60-228-16

April 20, 1961

Honorable Thomas F. Murphy
United States District Court
Southern District of New York
Foley Square
New York, New York

Re: United States v. Pan American
World Airways, Inc., et al.—
Civil Action No. 90-259

My dear Judge Murphy:

We feel that it is inappropriate for the Government to submit a proposed judgment for your consideration at the hearing in this case on April 24. Accordingly, we are enclosing a draft of a judgment which we feel carries out your holdings in the Opinion filed March 8 in every respect. We have discussed this proposed judgment with the Civil Aeronautics Board and are authorized to state that it meets the requirements of the Board in its present concern with the working out of flight patterns in the South American trade.

Sincerely yours,

Lee Loevinger, Assistant Attorney General Antitrust Division.

Enclosure

[fol. 5593] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF MOTION AND MOTION TO SUSPEND INJUNCTION PENDING APPEAL—Filed May 12, 1961

Please take notice that on the 18th day of May, 1961, before the Honorable Thomas F. Murphy, at the United States Court House, Foley Square, City of New York, at 10:00 o'clock in the forenoon or at a time to be fixed by the court, the undersigned will move this Court pursuant to Rule 72 of the Federal Rules of Procedure and Rule 18 of the Rules of the Supreme Court of the United States, for a suspension pending appeal of the injunction entered against it in this proceeding, as follows:

Upon the complaint and all the affidavits and other papers filed, and all the proceedings heretofore had herein, and the affidavit of John C. Marie attached hereto, the defendant Pan American (hereinafter referred to as the "defendant") moves this Court for an order suspending the injunction heretofore entered against the defendant in so far as it restrains the defendant from taking action to prevent any application to the Civil Aeronautics Board by Panagra to alter, amend, modify or extend its routes, pending the hearing and determination of defendant's appeal to the Supreme Court of the United States from the decree of this Court entered on May 8, 1961, or for such [fol. 5594] other or further relief as the Court finds appropriate in the premises.

Defendant does not at this time move this Court to suspend the injunction heretofore entered against it in so far as it imposes upon defendant a conditional order of divestiture of its stock interest in Panagra, because it does not now appear that the Civil Aeronautics Board will undertake consideration of divestiture before the appeal can be decided.

Sullivan & Cromwell, By David W. Peck, A Member of the Firm, 48 Wall Street, New York 5,

N. Y.; Cleary, Gottlieb, Steen & Hamilton, By John K. Mallory, A Member of the Firm, 52 Wall Street, New York 5, N. Y., Attorneys for Defendant Pan American World Airways, Inc.

[fol. 5595]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION TO SUSPEND INJUNCTION PENDING APPEAL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN C. PIRIE, being duly sworn, deposes and states as follows:

1. I am Vice President and Associate General Counsel of Pan American World Airways, Inc., a defendant in the above-entitled proceeding, and make this affidavit in support of Pan American's Motion to Suspend Injunction Pending Appeal to the Supreme Court of the United States.

2. The defendant, Pan American, filed its Notice of Appeal to the Supreme Court of the United States with the Clerk of this Court on May 12, 1961.

3. The final judgment of this Court, entered on May 8, 1961 (a copy of which is annexed hereto as Exhibit A), grants plaintiff two forms of injunctive relief against defendant, Pan American:

[fol. 5596] (a) Pan American is ordered to divest itself of ownership of stock in Pan American-Grace Airways, Inc. at a time and under a plan to be determined by the Civil Aeronautics Board with the Court's approval; and

(b) Pending such divestiture, Pan American is enjoined from taking any action, direct or indirect, which

would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. (hereafter, Panagra) to alter, amend, modify or extend its routes.

4. Pan American does not at this time seek a stay of the conditional order for divestiture, because it does not appear that the Civil Aeronautics Board will undertake consideration of divestiture before the appeal can be decided.

5. The present Motion is directed only to the injunctive provision that would, in effect, force Pan American to concur in the filing with the Civil Aeronautics Board of an application by Panagra to extend its route to the United States. Failure to stay that injunctive provision could result in irreparable damage to Pan American if its appeal from the judgment entered herein on May 8, 1961 is successful. It is Pan American's position that, under the agreement pursuant to which Panagra was formed, the parties agreed that Panagra would be part of the Pan American System and that Panagra's operations would be limited to those from the Panama Canal down the West Coast of South America. This Court did not agree with Pan American's interpretation of the agreement, but held that Pan American's insistence upon performance of the agreement as interpreted by it constituted a violation of the Sherman Act. Pan American's appeal includes appeal from that finding. However, if Pan American's appeal is successful, the reversal of the decision of this Court might [fol. 5597] be meaningless if, in the meantime, Panagra, with Pan American's concurrence, were to have filed an application with the Civil Aeronautics Board inconsistent with the proper interpretation of the Panagra formation agreement as it would have been found and determined by the Supreme Court. W. R. Grace & Company (hereafter, Grace) would probably be in a position to prevent the withdrawal of such application, even if the Civil Aeronautics Board would permit withdrawal. Thus, Pan American might be faced with an application before the Civil Aeronautics Board even though such application was con-

trary to a valid contract and even though it had succeeded in having the order vacated which required it to permit the filing of such application. Clearly, such a result would cause irreparable injury to Pan American. On the other hand, the stay sought in this Motion would not adversely affect anyone. Any route amendment application by Panagra would undoubtedly be processed as part of an over-all review by the Civil Aeronautics Board of the air transport route pattern for Latin America. Pan American agrees, and in fact urges, that such a review should proceed as promptly as possible. However, any definitive action in such a proceeding, including action on any Panagra application, would be materially influenced by any change in the ownership and control of Panagra. This in turn will depend upon the outcome of Pan American's appeal herein and of the appeal which the Government has stated its intention to take from the decision herein as to Grace. Accordingly, no useful purpose would be served by the filing of a Panagra route amendment application before such appeals are decided.

6. For these reasons, Pan American believes that it must request a stay of the injunctive provision of the final [fol. 5598] judgment until after its rights can be determined on its appeal to the Supreme Court.

JOHN C. PIRIE

Sworn to before me this
12th day of May, 1961.

CHRISTINE A. BARTON
Notary Public

CHRISTINE A. BARTON
Notary Public, State of New York
No. 24-5205375
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1962

[fol. 5599]

EXHIBIT A TO AFFIDAVIT

US DISTRICT COURT
FILED
May 8, 1961
SD of NY

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action

No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

FINAL JUDGMENT

This case having come on for trial and the Court having filed its Opinion and Findings of Fact and Conclusions of Law on March 8, 1961, now therefore in accordance with the Opinion and Findings of Fact and Conclusions of Law,

IT IS ORDERED, ADJUDGED AND DECREED

1. This action is hereby dismissed with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc.

2. Defendant Pan American World Airways, Inc. shall divest itself of ownership of its stock in Pan American-Grace Airways, Inc. at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act.

[fol. 5600] 3. Pending such time as Pan American World Airways, Inc. divests itself of its stock in Pan American-Grace Airways, Inc. pursuant to paragraph 2 of this judgment, it is enjoined from taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend its routes.

Dated: New York, N. Y.
May 8th, 1961

Thomas F. Murphy
United States District Judge

Judgment entered May 8, 1961

Herbert A. Charlson,
Clerk

[fol. 5601]

UNITED STATES DEPARTMENT OF JUSTICE

April 20, 1961

Hon. Thomas F. Murphy
United States District Court
Southern District of New York
Foley Square
New York, New York

Re United States v. Pan American
World Airways, Inc., et al.
Civil Action No. 90-259

My dear Judge Murphy:

We feel that it is not inappropriate for the Government to submit a proposed judgment for your consideration at the hearing in this case on April 24. Accordingly, we are enclosing a draft of a judgment which we feel carries out your holdings in the Opinion filed March 8 in every respect. We have discussed this proposed judgment with the CAB and are authorized to state that it meets the requirements

of the Board in its present concern with the working out of flight patterns in the South American trade.

Sincerely yours,

Lee Loevinger
Assistant Attorney General
Antitrust Division

[fol. 5602] Proof of service (omitted in printing).

[fol. 5603] Proof of service (omitted in printing).

[fol. 5604]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civ. 90-259

UNITED STATES OF AMERICA, Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.

MEMORANDUM ON MOTION TO SUSPEND JUDGMENT—
June 13, 1961

MURPHY, D.J.

Motion by Pan American for an order suspending the injunction heretofore entered against it insofar as it restrains Pan American from taking action to prevent any application to the Civil Aeronautics Board by Panagra to alter, amend, modify or extend Panagra's routes pending the hearing and determination of Pan American's appeal to the Supreme Court of the United States from the decree of this court entered on May 8, 1961, is granted, unless W. R. Grace and Company serve and file within ten days of the date hereof a stipulation agreeing that, in the event the Supreme Court of the United States reverses the find-

ings and conclusions of this court that Pan American's conduct in blocking Panagra applications to the C.A.B. was in violation of the antitrust laws, it will cause its nominees on Panagra's board to vote in favor of a resolution to withdraw any application that Panagra may file with the C.A.B. to alter, amend, modify or extend its routes during the pendency of such appeal. If such a stipulation be filed, then in that event this motion by Pan American is denied.

This is an order. No settlement is necessary.

THOS. F. MURPHY
U. S. D. J.

Dated: New York, N. Y.
June 13, 1961.

[fol. 5605] Copy of preceding page.

[fol. 5606] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

STIPULATION OF W. R. GRACE AND COMPANY—
Filed June 22, 1961

Whereas, on May 8, 1961 the Honorable Thomas F. Murphy filed a judgment dismissing this action with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc., ordering Pan American World Airways, Inc. to divest itself of ownership of its stock in Pan American-Grace Airways, Inc., and enjoining Pan American World Airways, Inc. from taking any action, direct or indirect, which would interfere with the filing and processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend it routes; and

Whereas, on May 12, 1961 Pan American World Airways, Inc. filed its notice of appeal to the Supreme Court of the

United States from the judgment of this Court filed on May 8, 1961; and

Whereas, on May 12, 1961 Pan American World Airways, [fol. 5607] Inc. served a motion to suspend pending appeal that portion of the judgment filed on May 8, 1961 which enjoined it from interfering with the filing of applications by Pan American-Grace Airways, Inc.; and

Whereas, on June 13, 1961 the Honorable Thomas F. Murphy filed a memorandum granting the said motion "unless W. R. Grace and Company serve and file within ten days of the date hereof a stipulation agreeing that, in the event the Supreme Court of the United States reverses the findings and conclusions of this court that Pan American's conduct in blocking Panagra applications to the C.A.B. was in violation of the antitrust laws, it will cause its nominees on Panagra's board to vote in favor of a resolution to withdraw any application that Panagra may file with the C.A.B. to alter, amend, modify or extend its routes during the pendency of such appeal";

W. R. Grace and Company hereby stipulates and agrees that, in the event the Supreme Court of the United States reverses the findings and conclusions of this court that Pan American's conduct in blocking Panagra applications to the C.A.B. was in violation of the antitrust laws, it will cause its nominees on Panagra's board to vote in favor of a [fol. 5608] resolution to withdraw any application that Panagra may file with the C.A.B. to alter, amend, modify or extend its routes during the pendency of the appeal by Pan American World Airways, Inc. from this Court's judgment of May 8, 1961.

Cahill, Gordon, Reindel & Ohl, By Laurence F. McKay, A Member of the Firm, Attorneys for Defendant W. R. Grace and Company, 80 Pine Street, New York 5, N. Y.

[fol. 5609] Proofs of service (omitted in printing).

[fol. 5610] [File endorsement omitted]

States sought to dissolve the union between Pan American World Airways and W. R. Grace & Co., who have combined with one another since 1928 under the corporate form Pan American-Grace Airways, Inc., ("Panagra") 50% of whose stock is held by Pan American and 50% by Grace. The district court held that Pan American's course of conduct in restraining the competitive activities of Panagra constituted monopolization and attempted monopolization of trade, but that Grace and Panagra itself had not been guilty of any antitrust violation. The court decreed that Pan American divest itself of its interest in Panagra, subject to a plan to be devised by the Civil Aeronautics Board. The questions presented are:

1. Whether Grace and Panagra illegally combined and conspired with Pan American to allocate territories in air transportation service between the United States and Latin [fol. 5616] America and within Latin America.

2. Whether Grace attempted to monopolize, conspired to monopolize, and monopolized all or part of Latin America air transportation service.

3. Whether in view of Grace's ownership of extensive water carrier interests serving the west coast of South America-United States trade routes, its acquisition and retention of a 50% interest in an air carrier, serving the same areas by a competing mode of transportation, constitutes a combination in unreasonable restraint of trade.

Edward R. Kenney, E. Riggs McConnell, Herbert F. Peters.

[fol. 5617] Certificate of service (omitted in printing).

[fol. 5618]

SUPREME COURT OF THE UNITED STATES

No. 257—October Term, 1961

PAN AMERICAN WORLD AIRWAYS, INC., Appellant,

vs.

UNITED STATES

ORDER POSTPONING JURISDICTION—Filed January 15, 1962

Appeal from the United States District Court for the Southern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits and the case is transferred to the summary calendar.

[fol. 5619]

SUPREME COURT OF THE UNITED STATES

No. 583—October Term, 1961

UNITED STATES, Appellant,

vs.

PAN AMERICAN WORLD AIRWAYS, INC., et al.

ORDER POSTPONING JURISDICTION—Filed January 15, 1962

Appeal from the United States District Court for the Southern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. The case is transferred to the summary calendar and set for argument immediately following No. 257.

[fol. 5611]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 12, 1961

I. Notice is hereby given that Pan American World Airways, Inc., one of the defendants above named, hereby appeals to the Supreme Court of the United States from the final order adjudging it to be in violation of the antitrust laws of the United States entered in this action on May 8, 1961.

This appeal is taken pursuant to 15 U.S.C. §29.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record of the proceeding.

III. The following questions are presented by this appeal:

1. Whether Pan American has monopolized or attempted to monopolize air transportation between the United States and South America in violation of §2 of the Sherman Act.

2. Whether Pan American has monopolized or attempted to monopolize air transportation between the United States and the Panama Canal Zone in violation of Section 2 of the Sherman Act.

[fol. 5612] 3. Whether the allegations of the complaint and the violations found by the district court are within the primary jurisdiction of the Civil Aeronautics Board and therefore not within the competence of the district court until decision by the Civil Aeronautics Board.

4. Whether there was an agreement between Grace and Pan American under which Panagra was to operate

only between the Canal Zone and Buenos Aires, Argentina.

5. Whether the relief contained in the final judgment is erroneous, in that remedies imposed against Pan American exceed those reasonably necessary or appropriate in this case.

Sullivan & Cromwell, By David W. Peck, A Member of the Firm, 48 Wall Street, New York 5, New York; Cleary, Gottlieb, Steen & Hamilton, By John K. Mallory, A Member of the Firm, 52 Wall Street, New York 5, New York, Attorneys for Defendant Pan American World Airways, Inc.

[fol. 5613] Proof of service (omitted in printing).

[fol. 5614] Proofs of service (omitted in printing).

[fol. 5615] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 7, 1961

I. Notice is hereby given that the plaintiff, the United States of America, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on May 8, 1961, to the extent that it dismisses the action with respect to the defendants W. R. Grace & Co., and Pan American-Grace Airways, Inc.

This appeal is taken pursuant to 15 U.S.C. 29.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include therein the entire record before the district court.

III. The Questions Presented: In this action brought under Sections 1, 2 and 3 of the Sherman Act, the United

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1961

No. [redacted] 93

PAN AMERICAN WORLD AIRWAYS, INC.,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Respondent

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

DAVID W. PECK
48 Wall Street
New York, New York
Counsel for Appellant

Of Counsel:

SULLIVAN & CROMWELL
48 Wall Street
New York, New York

CLEARY, GOTTLIEB, STEEN & HAMILTON,
JOHN K. MALLORY, JR.
52 Wall Street
New York, New York

May 12, 1961. The District Court, on July 7, 1961, entered an order extending until July 25, 1961, the time for docketing the appeal in this Court. The jurisdiction of this Court is conferred by §2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. §29, as amended. *United States* v. *Yellow Cab Company*, 332 U. S. 218 (1947); *United States* v. *du Pont & Co.*, 351 U. S. 377 (1956).

Statutes Involved

Sections 1, 2 and 3 of the Sherman Act, Sections 102d, 411 and 801 of the Federal Aviation Act and Section 414 of the Civil Aeronautics Act are set forth in the Appendix (74a-77a).

The Questions Presented

1. When Pan American World Airways, Inc. (Pan American) accepted W. R. Grace & Co. (Grace), a non-competitor, as a 50% participant in a joint company, Pan American-Grace Airways, Inc. (Panagra) in 1928 to engage in a new airline operation from the Canal Zone down the west coast of South America connecting with the developing Pan American system of air transportation between the United States, Central America, the Canal Zone and South America, did not Pan American and Grace agree that the jointly owned company would be restricted to a route from the Canal Zone down the west coast of South America, and would not expand its operation to the United States in competition with Pan American; was not the District Court clearly in error in finding the absence of such agreement; and was not such agreement a part of the agreement that "Pan American and Panagra were not to parallel each other's routes" which the District Court found to exist and to be legal?

2. Regardless of any agreement on the subject, was it not lawful under the antitrust laws for Pan American to exercise its 50% interest in the joint company to prevent an expansion of the joint business in competition with its own operations between the Canal Zone and the United States?

3. In view of the fact that the extent of competition is controlled and regulated by the Civil Aeronautics Board ("CAB") and by the President of the United States in the international air transportation industry, can Pan American monopolize and, if so, did it monopolize, air transportation between the United States and South America, and the United States and the Canal Zone, in violation of §2 of the Sherman Act?

4. Is not Pan American's refusal to permit Panagra to apply for routes to the United States a "competitive practice" within the meaning of §411 of the Federal Aviation Act (49 U. S. C. §1381) and therefore within the primary jurisdiction of the CAB, and was it not therefore error for the District Court to decide the issue under the antitrust laws prior to allowing the CAB to exercise its primary jurisdiction?

5. Did not the CAB's orders in 1947, 1950 and 1955, approving the Pan American-Panagra Through Flight Agreement and the accompanying Parent Company Agreement between Pan American and Grace, constitute approval of Pan American's refusal to allow Panagra to apply for routes to the United States, and thus result in immunity for Pan American from the antitrust laws as provided in §414 of the Civil Aeronautics Act (52 Stat. 1004)?

6. Does the prevention by Pan American of the filing of an application with the CAB by a single potential com-

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IN THE

Supreme Court of the United States

October Term, 1961

PAN AMERICAN WORLD AIRWAYS, INC.,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

Opinion Below

The opinion of the District Court is reported at 193 F. Supp. 18; the final judgment entered by it is not reported. The opinion and judgment are set forth in full in the Appendix hereto (1a-73a).[1]

Jurisdiction

This antitrust suit was originally brought under §1, §2 and §3 of the Sherman Act, 15 U. S. C. §§1, 2 and 3. The final judgment of the District Court was entered on May 8, 1961, and the notice of appeal was filed in that court on

[1] Page numbers of the District Court's opinion are hereinafter referred to with an "a" following, in designation of the page number of the Appendix hereto.

petitor, Panagra, in which it had a 50% interest, constitute monopolization in violation of §2 of the Sherman Act, particularly in view of the fact that Braniff Airways, Inc. (Braniff), has been certificated to fly the route and the District Court found that if Panagra had been a successful applicant Braniff would not have been certificated?

7. Can Pan American be held to have violated §2 of the Sherman Act by monopolizing or attempting to monopolize air transportation between the United States and the Canal Zone when §2 by its terms applies only to trade or commerce between the several states or with foreign nations and the Canal Zone is neither a state of the United States nor a foreign nation?

8. Did not the District Court abuse its discretion in ordering Pan American divested of its interest in Panagra?

Statement of the Case

Pan American started in 1927 to formulate plans for the establishment of a comprehensive system of air transportation between the United States and Central and South America and commenced operations that year between Key West, Florida, and Havana, Cuba. In July, 1928, Pan American obtained the United States mail contract between Miami and the Canal Zone which was the forerunner of an extension of the contract to the east coast of South America and the establishment of Pan American air service between Miami and the Canal Zone and down the east coast of South America (Op. 9a-10a).

Pursuing its plan to establish like service down the west coast of South America, Pan American had discussions with W. R. Grace & Company, then an established company on the west coast of South America, operating among other

enterprises a steamship service between the United States and the west coast of South America. Conversations between the two companies looked to the formation of a jointly owned airline to bid on and operate the mail contract from the Canal Zone down the west coast of South America. Grace was interested in airline development, but its "interest was confined to the west coast" (Op. 24a-25a). The result was that in September, 1928, the company, later known as Panagra, with Pan American and Grace as equal 50% owners, was formed to operate from the Canal Zone down the west coast of South America (Op. 12a-17a). In Pan American's view the evidence clearly establishes that Panagra was organized pursuant to an agreement between Pan American and Grace that Panagra would operate only from the Canal Zone down the west coast of South America and that Pan American and Panagra would not parallel each other's routes. Panagra was the successful bidder for the airmail contract for the west coast route from the Canal Zone south and operated this route while Pan American secured, and operated under, airmail contracts which covered the east coast of South America.

In 1938 commercial aviation became a regulated industry with the passage of the Civil Aeronautics Act (52 Stat. 973, as amended, 49 U. S. C. §401 *et seq.* and superseded by the Federal Aviation Act of 1958, Sections 101 *et seq.*, 49 U. S. C. §1301 *et seq.* which, in the portions relevant here, is substantially identical). This Act gave to the CAB and the President of the United States comprehensive responsibility, subject to certain grandfather rights, to regulate air carriers and the existence and extent of competition between them.

Beginning in 1938 Grace caused its nominees on the Panagra board of directors to urge the filing of an application by Panagra with the CAB for extension of Panagra's routes from the Canal Zone to the United States, seeking to

JURISDICTIONAL STATEMENT

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other contemplated *mutually* by them with respect to possible extension of Panagra's line to the United States" (Op. 30a, 32a, 34a).

The District Court found that the agreement not to parallel routes was not a conspiracy to monopolize and restrain trade and commerce, and that the defendants' position in South America, acquired by virtue of air mail contracts and maintained under the aegis and control of the CAB and the President, "may be explained in simple terms without unlawful implications" (Op. 26a).

It is clear from the opinion that the court would have regarded the full agreement (including non-paralleling of the Pan American route from the Canal Zone to the United States), which Pan American maintains was the agreement between the parties, as being altogether as lawful as the less complete agreement which the court found to exist. The absence of finding the full agreement, which, in the nature of things and in line with the court's finding of an agreement not to parallel routes, must have existed, permitted and prompted the court to find that Pan American's insistence on keeping Panagra from paralleling Pan American's route from the Canal Zone to the United States, and voting its 50% interest in Panagra accordingly, was a unilateral restraint against Panagra and hence a monopolization of commerce between the United States and the Canal Zone.

As the decision of the District Court thus turns upon its finding with respect to the scope of the agreement not to parallel routes, the true scope of that agreement becomes a question not only substantial but of the utmost importance. Correspondingly, from what has been stated, it may readily be seen that the subsidiary question of whether the District Court was not clearly in error in finding the absence of an

agreement with respect to the route between the United States and the Canal Zone is a very substantial question.

2. Should this Court nevertheless now find that there was no agreement as to Panagra's extension to the United States, Pan American still maintains and will argue that each of the participants in this lawful joint venture may lawfully resist any attempt to alter the original joint business in a manner which would make it competitive and conflicting with its own pre-existing enterprise. It is abundantly clear that such action does not violate §1 of the Sherman Act since there is no agreement and hence no conspiracy. While this Court has never passed on the question of whether such an exercise of equal ownership in a joint company of lawful venture can constitute a violation of §2 of the Act, it is submitted that it is clearly lawful for an equal owner in a joint venture, lawfully undertaken for a specific purpose, to insist that the joint venture not be extended to conflict with his own business, and to vote his stock against such an extension.

II.

Questions Concerning the Effect of the Civil Aeronautics Act.

3. There is here a basic question of whether a United States air carrier can "monopolize" international air transportation within the meaning of §2 of the Sherman Act when the amount of competition is determined by the Government. This is the first antitrust case ever decided by a District Court holding that a company in an industry in which the extent of competition is strictly regulated and controlled by an administrative agency (the Civil Aeronautics Board) and by the President of the United States has the requisite power to monopolize or attempt to

parallel the route which Pan American had even before the formation of Panagra. Pan American, taking the position that the agreement pursuant to which Panagra was formed limited its operations to the route from the Canal Zone down the west coast of South America and barred its extension to parallel Pan American's service to the United States, refused to authorize the proposed application. As a result Panagra, which has an equal number of Grace and Pan American representatives on its board of directors, did not apply for this route.

In an effort to satisfy Grace, an agreement between the two parent companies was entered into in February, 1939 under which Pan American agreed that a Grace representative would become president of Panagra and be placed in charge of the management of the company; Pan American agreed to maintain between Miami and the Canal Zone adequate, direct, connecting service with Panagra, and agreed that if such connecting service was not reasonably adequate Panagra would be allowed to apply to the CAB to operate to the United States. Grace, having acquired control of the management of the jointly owned company by this arrangement, disregarded the agreement within two years and again agitated to have Panagra apply for a route from the Canal Zone to the United States. Pan American again refused to allow Panagra to apply for the route on the grounds that such an application was contrary to the agreement under which Panagra was formed and also contrary to the 1939 agreement.

Nonetheless, in 1941 Grace, over Pan American's objection, filed with the CAB an application on behalf of Panagra to extend Panagra's routes to the United States (Docket No. 707). After a hearing the CAB held that it could not treat the Grace application as being a Panagra application. On Grace's appeal to the Court of Appeals for the

Second Circuit that court reversed to the extent of holding that Grace's application should be said to be Panagra's if Pan American's refusal to allow Panagra to apply was the result of "illegality and fraud." *W. R. Grace & Co.* v. *C. A. B.*, 154 F. 2d 271 (2d Cir. 1946). This Court granted certiorari. 328 U. S. 832 (1946) (sub nom. *Pan American Airways Corp.* v. *W. R. Grace & Co.*).

The case was never acted on by this Court, as Grace and Pan American negotiated a settlement of the dispute by entering into two related agreements, a Through Flight Agreement between Pan American and Panagra, under which Pan American operated Panagra aircraft over Pan American's Canal Zone-United States routes, thereby providing through plane service, and a related Parent Company Agreement between Grace and Pan American. After an extensive hearing the CAB approved both agreements. Although the District Court did not make findings on this point, it is undisputed in the evidence that both Grace and Pan American officials testified at the CAB hearing that a primary purpose of the agreements was to settle the dispute between them and end the controversy over a Panagra extension, unless both parents should agree to have Panagra apply for an extension. When the agreements were approved, this Court dismissed as moot the writ previously granted. 332 U. S. 827 (1947). Despite these agreements and the Board's approval of them, Grace again in 1957 filed an application allegedly on behalf of Panagra, for routes to the United States (Op. 46a-50a, 52a-54a). This application is now before the Board.

In 1946 Braniff was certificated to service routes from the United States to the Canal Zone and South America (Op. 50a). It is the announced policy of the CAB, in view of the available traffic, that the public interest requires that no more than two United States air carrier systems

monopolize. In foreign air transportation, entry into the market is controlled by the CAB and ultimately by the President of the United States (49 U. S. C. 1302d, 1461). The Board and President alone can certificate any number of airlines to operate in the markets involved and, if necessary, subsidize such airlines, just as Pan American and Panagra have been subsidized, and just as Braniff, which operates in competition with them has also been subsidized. As the District Court said, the defendants' position in South America has been maintained "under the aegis and control of the C. A. B. and the President." Pan American will argue, therefore, that it does not and cannot have monopoly power, dependent as such power is upon the power to exclude competition. In any event, under the facts found by the District Court, Pan American did not have such power.

4. This question presents an important issue, not heretofore passed on by this Court, of authority and priority as between the court and an administrative agency in the determination of the propriety of the action of Pan American which is in issue on this appeal. The CAB has specific power under Section 411 of the Federal Aviation Act (49 U. S. C. §1381) to investigate the trade practices and methods of competition of air carriers, and to terminate such practices as it finds to be unfair. Pan American will argue that the firmly established doctrine of primary jurisdiction, *Texas & Pacific Ry.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426 (1907); *Far East Conference* v. *United States*, 342 U. S. 570 (1952), required the District Court to refrain from acting until the CAB had been afforded the opportunity to exercise the jurisdiction conferred on it by Congress to pass upon the action of Pan American in utilizing its stock interest in Panagra to prevent that company from applying for routes that would parallel those of Pan American.

5. There is here presented for the first time a question of the scope and effect of Section 414 of the Civil Aeronautics Act (52 Stat. 1004), in which Congress has specifically provided immunity from the antitrust (and other) laws to carriers acting pursuant to agreements approved by the CAB. Pan American will argue that the Board's approval of its Through-Flight Agreement with Panagra and the related Parent Company Agreement between Pan American and Grace "authorized, approved or required" Pan American's refusal to give its consent to a Panagra application for routes to the United States so long as the agreements remain in effect. Pan American will argue that the effect of the CAB's approval of the agreements was at least to protect Pan American from a prosecution which is inconsistent with administrative action and the legal consequences thereof. The result reached by the District Court, if allowed to stand, must ultimately hamper airline regulation by the authority of government vested with the responsibility of such regulation.

III.

Novel Questions of Construction of Section 2 of the Sherman Act.

6. The question is whether the power to exclude and the exclusion of only one of many potential competitors is monopolization within the comprehension of §2 of the Sherman Act. The District Court did not find that Pan American has or ever has had the power to affect in any way the entry into the market of potential competitors other than Panagra. Plainly no such power exists in Pan American. Pan American will argue that its limited power over the joint company, and its exercise of that limited power to refuse to permit it to apply for a route to the United States, cannot be found to constitute the *power to*

exclude competition which is necessary to a finding of a violation of §2. There is no authority to support the District Court's conclusion of a §2 violation on such facts, but the conclusion is contrary to a decision of the District Court, in the same circuit, affirmed by the Court of Appeals. *Interborough News Co.* v. *Curtis Publishing Co.*, 127 F. Supp. 286 (S. D. N. Y. 1954), aff'd, 225 F. 2d 289 (1955). The circumstance of direct appeal, therefore, brings before this Court a fundamental question of the scope of Section 2 in the context of conflict within a single judicial district and circuit.

7. The District Court has found that Pan American monopolized air transportation between the United States and the Canal Zone in violation of Section 2 of the Sherman Act. Section 2 of the Sherman Act by its terms applies only to commerce between the states and with foreign nations. Pan American will argue that, since the Canal Zone is neither a state of the United States nor a foreign nation, the finding of a violation of Section 2 of the Sherman Act by monopolization of the United States-Canal Zone market is not sustainable. While Section 3 of the Sherman Act does apply to commerce between the United States and a territory, it does not include within its embrace single-firm monopolization or attempts to monopolize. It makes illegal only a "contract, combination in form of trust or otherwise, or conspiracy" in restraint of trade. It therefore requires agreement or combination, that is, action by more than a single entity. The District Court found illegal only unilateral action by Pan American. Thus, Pan American will submit that monopolization of the United States-Canal Zone market, even if it existed, could not constitute a violation of Section 2 or Section 3 of the Sherman Act.

IV.

The Question of Relief.

8. This Court has frequently reviewed the propriety of drastic antitrust relief granted by a single district judge, cautioning against the indiscriminate use of divestiture as a remedy when "other effective methods, less harsh, are available." *Timken Co.* v. *United States*, 341 U. S. 593, 603 (1951). Pan American will argue that other available relief would amply redress the only violation found or threatened, and that it was an abuse of the District Court's power to order even conditional divestiture in this case.

CONCLUSION

We submit that the questions presented by this appeal are substantial and of large public importance.

Respectfully submitted,

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serve South America. Pursuant to this policy, the CAB has stated that the certification of yet another independent carrier would be directly contrary to the public interest. Approximately two months after the Government commenced this action, the CAB stated in *New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501, 504 (1954):

> "The successful conclusion of the Attorney General's suit against Pan American and W. R. Grace would lead to a wholly independent Panagra and, thus, to three competitive United States-flag systems. Yet we are convinced that the available traffic potential in South America will not warrant the subsidy support of three such services, and that their existence would lead to 'a waste of public money or private investment.'"

The Government reiterated this to the court in December, 1958. Pan American's evidence submitted at the trial and held by the court to be irrelevant (Op. 43a) substantiated the CAB's views of the undesirability and the uneconomic nature of a three-carrier system between the United States and South America.

The Complaint

The Government's complaint may be summarized as follows:

1. Pan American and Grace entered into an agreement in connection with the formation of Panagra under which Panagra was to have the exclusive right to traffic along the west coast of South America from the Canal Zone south, free from Pan American competition, and Pan American was to be free from Panagra competition elsewhere

throughout South America and between the Canal Zone and the United States.

2. Grace and Pan American imposed restraints on Panagra by preventing it from establishing and maintaining its own research, procurement, advertising, sales and commercial activities in the United States independent of Pan American, and from establishing and maintaining facilities, sales and commercial representation in South America independent of Grace.

3. Pan American and Grace conspired to monopolize transportation between the eastern coastal areas of the United States and South America, particularly the western coastal areas of South America and Buenos Aires, Argentina.

4. Pan American and Grace organized Panagra in such a fashion that each has negative control of Panagra's competition with its independent operations and prevented Panagra's extension of its routes in South America and to the United States.

5. The defendants acquired the stock or assets of competing airlines in South America and used their power to restrain competition from other United States air carriers and engaged in restrictive practices to impede and restrain United States air carriers in South America.

6. Grace, a steamship owner, monopolized and attempted to monopolize transportation by air and surface carriers between the United States and the western coastal areas of South America.

7. Grace, the owner of a steamship company, violated §1 of the Sherman Act by controlling a competing air carrier.

The Opinion of the District Court

The District Court found that there was no combination or conspiracy to monopolize or to restrain trade between Pan American, Grace and Panagra and no violation of §1 of the Sherman Act. It found further that, although there was an agreement between Grace and Pan American that Panagra and Pan American would not parallel each other's routes, such agreement did not constitute a conspiracy.

As the court stated in its opinion:

> "We have carefully considered all of the evidence relating to the conspiracy charge and, in our opinion, no such conspiracy existed between Grace and Pan American. The only agreement we can find that approaches conspiracy is their understanding that Pan American and Panagra were not to parallel each other's routes. In our opinion this was not a conspiracy to monopolize and restrain trade and commerce.
>
> • • • • •
>
> "The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America. • • • The union of their physical and technical resources assured the maximum possibility of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (6th Cir., 1898), modified and aff'd 175 U. S. 211.
>
> • • • • •
>
> "Consideration of the defendants' agreement or understanding with respect to the respective spheres of

> operations for the two airlines, when viewed in the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved, as well as the relation of the parties one to the other and the nature of the industry itself, compels the conclusion on our part that it involved no violation of the anti-trust laws" (Op. 26a, 27a-28a, 29a-30a).

Stating that "There is no doubt the defendants came to agree upon a division of territory; the dispute relates to when such agreement came about and what its details were."—the court reached the conclusion that the agreement as to "spheres of operations," made after the formation of Panagra, was an agreement not to duplicate or parallel services in South America, without any "intention one way or the other contemplated *mutually* by them with respect to possible extension of Panagra's line to the United States." The agreement so found was deemed "to be consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938" (Op. 34a). As the court found that there was no intention one way or the other "contemplated mutually" by Pan American and Grace with respect to Panagra's extension to the United States, the court did not pass on the legality of such an agreement, but it would seem clear that all that the court said as to the legality of the agreement which it found would apply equally to the agreement which the Government and Pan American say existed, namely, that Pan American and Panagra were not to parallel each other's routes, including routes between the United States and the Canal Zone as well as south of the Canal Zone.

The court then considered the further allegations of the complaint charging Pan American, Grace and Panagra, under §2 of the Sherman Act, with monopolizing or attempting to monopolize air transportation between the United States and South America, particularly the west coast of South America. As to Grace, the court held that steamship control of a competing airline was not illegal *per se* and that the question of Grace's control over the management of Panagra was within the primary jurisdiction of the CAB. As to alleged restraints regarding joint Panagra-Pan American offices, advertising, sales efforts, purchasing and maintenance, the court held that these matters were similarly within the primary jurisdiction of the CAB and for the most part had been approved by the Board. The court also held that Panagra did not monopolize air transportation between the United States and South America or within South America.

The only illegality found by the court was that Pan American, by its unilateral action in refusing to allow Panagra to apply for routes to the United States, monopolized and attempted to monopolize air transportation between the United States and South America and between the United States and the Canal Zone in violation of §2 of the Sherman Act.

The Final Judgment

On May 8, 1961, the District Court entered its final judgment dismissing the action with respect to Grace and Panagra (Appendix 71a-73a). It ordered Pan American to divest itself of ownership of its Panagra stock at such time and pursuant to such plan of divestment as the CAB directs pursuant to the standards prescribed by §102 of the Federal Aviation Act, subject to the District Court's approval.

Until such divestment, Pan American is enjoined from so exercising its interest in Panagra as to interfere with the filing or processing of route applications by Panagra before the CAB.

THE QUESTIONS ARE SUBSTANTIAL

I.

Questions Concerning the Joint Company.

1. The one factual question in this case, basic to the court's decision, is the scope of the territorial agreement between Pan American and Grace in their formation of Panagra. As the opinion of the District Court makes clear, Pan American started in 1927 on the establishment of a comprehensive system of air transportation serving the Caribbean, and Central and South America (Op. 9a). It first established and started operations on the link from Florida to Cuba and then Miami to the Canal Zone. At the same time that it projected for itself airline operations from the Canal Zone down the east coast of South America, it joined with Grace in 1928 in establishing Panagra to operate an airline from the Canal Zone down the west coast of South America. Not only was Grace's interest "confined to the west coast of South America" (Op. 24a-25a), but as the District Court found, and as was natural and economically essential, the parties agreed "that Pan American and Panagra were not to parallel each other's routes" (Op. 26a). Inconsistently and unwarrantedly, however (plainly so, we say, from the opinion itself), the court elsewhere stated in its opinion that the "understanding with respect to the respective spheres of operation for the two airlines" extended only to an east and west division of the coasts of South America and "there was no intention one way or the

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. 90-259

UNITED STATES OF AMERICA,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

OPINION

APPEARANCES:

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MURPHY, *D. J.*

Introduction

Nominally this is a government antitrust action brought pursuant to §4 of the Sherman Act, 15 U. S. C. 4, in which the defendants, Pan American World Airways, Inc., W. R. Grace and Company and Pan American-Grace Airways, Inc.,[1] are charged with violations of Sections 1, 2 and 3 of that act (15 U. S. C. 1, 2 and 3). Actually it is a continuation of a bitter family quarrel rampant since 1941 arising out of the unhappy and quondam unholy union of Pan American and Grace, each of whom owns 50% of the stock of Panagra, that the Civil Aeronautics Board (C.A.B.) could not resolve.[2]

Briefly, the complaint charges defendants with unlawful combination and conspiracy to restrain and monopolize trade and commerce between the United States and South America, particularly the west coast of South America. The relief sought is a decree requiring Pan American and Grace to divest themselves of their ownership of Panagra and enjoining all defendants from any and all challenged activities that are found to be violative of the antitrust laws. The ultimate objective of the government is to facilitate the merger of defendant Panagra with Braniff International Airways (Braniff), the only other American

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1 Hereinafter referred to as Pan American, Grace and Panagra, respectively.

2 The C.A.B. in 1945 and again in 1953 requested the Attorney General to institute this suit.

flag carrier operating between the United States and South America aside from Pan American and Panagra.[3] This is in accordance with the recommendation of the C.A.B. in 1954 in order to make possible thereby "effective" competition between American carriers in that area and to reduce substantially the heavy burden of subsidy presently borne by this government. *New York-Balboa Through Service, Reopened*, 18 C.A.B. 501, 505.

The principal defenses urged are condonation by the government of the acts complained of, estoppel and laches; immunity because many of the agreements and mergers and acts complained of were approved by the Civil Aeronautics Board under a grant from Congress that absolved the defendants from antitrust violations and, as far as Pan American is concerned, that this court has no jurisdiction at this time because of the primary jurisdiction conferred by Congress in the Civil Aeronautics Board.

The Parties

Pan American is a corporation organized in 1927 under the laws of the State of New York as Pan American Airways, Inc. In 1950 its corporate name was changed to Pan American World Airways Inc. Pan American directly operates routes in air transportation of persons, property and mail between the United States and various points in Europe, Asia, Africa, Australia and Central and South America. It is today the largest international air carrier in the world. It also has a number of subsidiaries, including foreign corporations engaged in the transportation by air of persons, property and mail.

Grace is a corporation organized in 1899 under the laws of the State of Connecticut with its principal office in New York City. Grace has subsidiaries which engage in

3 We disregard Delta Airlines, Inc., whose operations to Venezuela subsequent to 1946 are not significant to the problems of this case. Braniff was certificated for South America in 1946 and commenced such operations in 1948.

various aspects of industry, trade and commerce including Grace Line, Inc., which operates a steamship route, among others, for the transportation of persons, property and mail between the United States and the west coast of South America.

Panagra is a corporation organized in 1929 under the laws of the State of Delaware. Panagra is engaged in air transportation of persons, property and mail over routes between the Canal Zone and Buenos Aires, Argentina, via the countries on the west coast of South America. It is wholly owned by defendants Pan American and Grace, each of whom owns 50% of the stock thereof. The principal offices of Pan American and Panagra are located in New York City.

Civil Aeronautics Board

Commercial aviation in this country is a highly regulated industry, but became such only after Congress passed the Civil Aeronautics Act of 1938 (C.A.A.).[4] That act authorized the creation of the Civil Aeronautics Board and established for the first time a comprehensive system of economic regulation of air transportation and removed, or attempted to remove, the threat of uneconomic and destructive competition in that field by providing that no air carrier may engage in air transportation without first receiving a certificate of public convenience and necessity. It gave to the President of the United States approval and veto power for such certificates as related to "overseas" and "foreign" air transportation (49 U. S. C. 601). Since, however, a number of air carriers were in operation prior to the act it provided that as to those they could receive certificates of public convenience and necessity,

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4 This Act, 52 Stat. 977, as amended, 49 U. S. C. 401 *et seq.*, was superseded by the Federal Aviation Act of 1958, 49 U. S. C. 1301, *et seq.*, and as far as relevant to this case the provisions are identical and reference will be made only to the Civil Aeronautics Act.

under the so-called "grandfather" clause (49 U. S. C. 481(e)). Accordingly, Pan American and Panagra received certificates of convenience and necessity for the operations which had been conducted by them under the various foreign mail contracts.

Congress also provided what policy the C.A.B. should follow as being in the public interest and in accordance with the public convenience and necessity, and defined that policy as follows:

> "(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;
>
> "(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;
>
> "(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;
>
> "(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense; * * * " (49 U. S. C. 402).

Congress also gave to the C.A.B. the power to approve or disapprove rates and tariffs, all types of mergers, consolidations, acquisitions, pooling and other agreements (49 U. S. C. 481 *et seq.*) and with reference to certain of its orders antitrust immunity (49 U. S. C. 494).

The Complaint

The government's case was fashioned along three major lines which, however, are interdependent both theoretically and evidencewise.

The first line deals with alleged restraints of trade relating to a division of markets in the transportation of passengers, cargo and mail in commerce between the United States and South America asserted to be illegal both from the standpoint of reasonableness and as a *per se* violation of law. It is the government's claim that Pan American and Grace entered into an agreement prior to the formation of Panagra whereunder the proposed jointly owned company was to have the exclusive right to traffic along the west coast of South America from the Canal Zone south free from Pan American competition, and Pan American was to be free from competition from the proposed jointly owned company elsewhere throughout South America and between the Canal Zone and the United States.

The second line of attack relates to alleged restraints imposed upon Panagra by its two parent companies, Pan American and Grace. To a large extent the evidence of restraints on Panagra in the categories of joint offices, communications, equipment, publicity and sales are matters of agreement that must be initially approved by the C.A.B. and to a large degree have been approved and others are awaiting approval or extension of approval previously granted.

These agreements are, however, interrelated to the third line of attack wherein the government alleges that Pan American and Grace conspired to monopolize transportation between the eastern coastal areas of the United States and South America, particularly the western coastal areas of South America and Buenos Aires, Argentina. It is alleged that Pan American and Grace agreed to combine in

the formation of Panagra, equally controlled by them to engage in a limited operation from the Canal Zone south along the west coast of South America with the intent and purpose of preventing competition between Pan American and Grace with respect to transportation by air and preventing the establishment of an air transportation service independent of the control of themselves which would be competitive with the projected air services of Pan American and the surface operation of Grace Line, Inc.

It is claimed that these defendants, pursuant to such alleged conspiracy, organized Panagra in such a fashion that they each have a negative control of the latter's competition with their independent operations, and have prevented Panagra's extension of its routes in South America and to the United States, and from developing its own facilities in the United States independent of the control of Pan American, and in South America independent of the control of Grace. In addition, they are said to have acquired the stock or assets of, or have entered into agreements with competing airlines in pursuance of their design to restrain and monopolize, and have retarded, restrained or eliminated competition from local airlines in South America, as well as having attempted and committed illegal restraints with respect to the operations of Braniff.

Grace, in addition, is charged with monopolizing or attempting to monopolize transportation by air and surface carriers between the United States and the western coastal areas of South America. The government also argues that the ownership and control of a competing air carrier by the dominant surface carrier in the same market necessarily violates the antitrust laws.

As to Panagra the government claims that it, together with Pan American, after 1946 engaged in restrictive practices to restrain and impede other airlines on the west coast of South America.

Conclusions

On the facts hereinafter found we have concluded (1) that the joinder of Grace and Pan American was not the result of conspiracy, but was a lawful combination with legitimate ends; (2) the division of territories understanding under which the operations of the two airlines were conducted was not unreasonable under the circumstances and not a *per se* violation; (3) that Pan American's restraints against Panagra and its continued determination to suppress the extension of that airline to the United States, in itself, and in combination with other conduct on the part of Pan American constitutes a monopolization of commerce that contravenes the provisions of the Sherman Act, and would seem to require divestiture by that defendant; (4) that Grace's stock ownership in Panagra does not *per se* violate the Sherman Act; (5) Grace and Panagra have not been found guilty of any antitrust violations; (6) price fixing for the most part is a mooted issue and in view of our decision with regard to Pan American need not be considered at length; (7) we will defer to the primary jurisdiction of the C.A.B. the legality of the joint advertising, sales and offices, etc. agreements between the two airlines; (8) we will defer to the primary jurisdiction of the C.A.B. the question of Grace's control in the management of Panagra.

The Facts

In 1927 substantially all transportation between this country and Latin America was by steamship. International commercial aviation was in the experimental stage and as yet no American air transportation company had entered upon operations from the United States to South America.

In October, 1927, Pan American began operations under the first United States Post Office contract for the carriage of the mails by air to a foreign country, by inaugurating

such a service between Key West, Florida, and Havana, Cuba. Pan American also had a contract with the Cuban government for the carriage of Cuban mail to this country.

Between 1920 and 1927 several German and French companies had established commercial air transportation services in South America, in Colombia, Bolivia, Brazil, Argentina and Chile, and were receiving financial and diplomatic assistance from their governments necessary to the establishment and maintenance of such services. These foreign companies had envisioned routes throughout South America and had sought also to extend into the Canal Zone and to the United States.

Our government was greatly concerned for political, military and business reasons with the successful establishment of an American system of air transportation to Latin America, and recognized the need for legislation under which financial aid could be rendered to American companies to engage in international air transportation. The result was the enactment by Congress in March, 1928, of the first Foreign Air Mail Act (45 Stat. 248, amended, March 2, 1929, 45 Stat. 1449) which authorized the Postmaster General to let contracts for not more than ten years for the transportation of mail by airplane to foreign countries or insular possessions of the United States. The method of payment established by the Postmaster General was based on the mileage flown without relation to the amount of mail carried. It was in essence, subsidy.

On May 8, 1928, Pan American was awarded a contract under that act which superseded its 1927 contract for service between Florida and Cuba.

Pan American had started some time in late 1927 to formulate plans looking to the establishment of a complete system of air transportation serving all parts of the Caribbean, and Central and South America. It was aware of the potentialities of the Latin American market, as yet untapped by American international companies, and

Honorable Thomas F. Murphy, *U.S.D.J.* in
dated March 8, 1961.

equally aware of the impending legislation to subsidize American air lines. With knowledge of the projected routes of the Post Office Department (see House Report 481, 70th Cong., 1st Sess., 1928) or better, the active sponsor of them, it began studies in early 1928 of proposed routes from Miami, Florida, to the Canal Zone, and the Canal Zone to Valparaiso, Chile.

Pan American's ambitions, however, were not equalled by its assets[5] or financial resources, and ultimately, in June 1928, all of its stock was acquired by a holding company formed for the purpose of raising capital to enable Pan American to bid on the mail contracts advertised or about to be advertised by the Postmaster General, and to conduct operations under contracts it was awarded. This company was called the Aviation Corporation of the Americas (ACA) and included among its assets acquired at the time of the acquisition of Pan American, was an option to operate a concession by the government of Peru for the establishment of an air transportation service between the United States and Peru. In June 1928 ACA acquired a contract for the carriage of Peruvian air mail to the United States. The concession and mail contract were intended ultimately to be assigned to Pan American if and when it began a west coast service contemplated in its plans.

On July 13, 1928, Pan American was awarded the United States mail contract for the route from Miami to the Canal Zone, for ten years, with an option in the Postmaster General to extend the route along the north coast of South America via Trinidad, as far as Paramaribo, Dutch Guiana. On the same day Pan American was awarded a 10-year contract for a route from Miami to Puerto Rico, with a similar option for the extension of this route to Trinidad.

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5 It owned three airplanes—two Fokkers and one Fairchild.

In order to engage in air transportation operations into or within any of the countries of South America at this time, as well as today, such operating rights must be granted by the government of each such country whether by permit or concession. Without such rights Pan American or any foreign company could not even fly over these countries.[6] By the end of July 1928, Pan American had instituted negotiations for operating rights in Panama, Colombia and Ecuador. By reason of the option in Peru it was assured of rights in that country (or it could subcontract that portion of its proposed west coast operations to a Peruvian subsidiary). If it could secure rights in the first mentioned countries and in Chile the way would then be clear for the proposed operations under a contract to be advertised by the Postmaster General from the Canal Zone to Valparaiso, Chile. In Colombia, however, Pan American's efforts to acquire operating rights were opposed by German interests who controlled SCADTA, a Colombian air line organized in 1920 and operating in that country and between Colombia and Ecuador. The owners of SCADTA were influential with the Colombian government. They had sought to extend their line to the Canal Zone and thence to this country since 1925 or 1926 but without success. Being thus situated, they had successfully opposed Pan American's applications for Colombian rights and thereby blocked the extension of American flag operations south of the Canal Zone.

As early as 1927, Pan American sought to purchase all of the stock of SCADTA, and these negotiations continued until January 1929, at which time the principal stockholder and managing director of the company orally agreed with Pan American to sell sufficient stock to enable Pan American to gain control of the company. The agreement to purchase SCADTA stock immediately opened the way for the establishment of an American flag west coast airline, for as part of the agreement, SCADTA withdrew all opposi-

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6 Cf. *Northeast Airlines, Inc.—North Atlantic Route Case*, 6 C.A.B. 319, 322.

tion to Pan American's application to the Colombian government, and entered into an agreement granting to Pan American exclusive use of its landing facilities along the north and west coasts of Colombia and in Ecuador, subject to its receiving permits from the Colombian government. In February, 1929, a treaty was signed between the United States and Colombia providing for reciprocal rights to aircraft of the two countries for landing rights in the Canal Zone and Colombia. The oral agreement for the purchase and sale of SCADTA stock was reduced to a formal writing in February, 1930, and finally executed in April of 1931.

In early 1928 Grace had independently begun to inquire into the possibilities of a west coast airline and had caused a study to be made with respect thereto. It began inquiries with governmental officials and in time became apprised of the activities of the Pan American interests and their plans for a west coast route. Pan American at this time was seeking to interest the principal shipping companies along the various proposed routes in financial participation as well as to secure the benefits of association with steamship lines, including air-sea rescue arrangements, and use of communication and agency facilities of these lines which would considerably decrease the amount of capital investment for such facilities immediately necessary in the operation of air transportation companies.

In May 1928, officials of Grace and Pan American conferred with a view to joint participation, and again in the following months. Grace's approach was a conservative one at the outset. It was naturally interested in the new form of transportation and fully appreciated the commercial possibilities of the airplane. It also appreciated the potentially competitive aspects of air transportation, but felt that it was quite risky at that early stage and no immediate threat as a competitor of its steamship lines.

At this time Grace was aware of the impending contracts to be offered by the Post Office, including the Miami-Canal

Zone route which eventually went to Pan American, but its interest was limited to the proposed Canal Zone-Valparaiso route.

In the fall of 1928 Pan American entered into an agreement with Grace, evidenced by two letters dated respectively August 31st and September 7th,[7] whereunder each

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7 "August 31, 1928.

"Aviation Corporation of the Americas,
100 East 42nd Street,
New York City

Attention: Mr. J. T. Trippe

"Dear Sirs:

"This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

"A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of $15,000 for an assignment which will convey all of the rights of that company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

"We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U. S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

"If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

"You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such

can-Grace Airways, Inc., on February 21, 1929. Grace exercised its option to acquire 50% of the stock, and Panagra submitted a bid for the mail contract. Pan American and Grace each subscribed $500,000 to the capital stock of Panagra, including the amounts previously subscribed by them to the stock of Peruvian Airways Corporation.

On March 2, 1929, the Postmaster General awarded to Panagra the contract for Foreign Air Mail Route No. 9. Panagra was not the lowest bidder for this contract[8] but was found by the Postmaster to be the lowest responsible bidder that could satisfactorily perform the service to the best advantage of the government. In making the award, the Postmaster stated, *inter alia*:

> "This is the most important air mail contract that has as yet been awarded. Its importance goes not alone to the financial ability of the bidders but more directly and to a far greater degree to their proven and recognized capacity for performing the service contemplated.
>
> "The Pan American company has filed evidence of extensive preparation for the operation of an air mail route through the countries with which arrangements are necessary. It has had this particular service in view for the last two years and has for that length of time been conducting negotiations and perfecting arrangements for the carrying on of the service if in the fulness of time it should be awarded the contract for it. It has the required franchises under which to operate in the countries to be served and over which the line passes. It is indeed operating through subsidiary companies already in existence over a considerable portion of the route under consideration. In addition to this it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly estab-

8 The award of this contract was protested by the low bidder (American International Airways, Inc.), which protest was denied after the Attorney General rendered an opinion sustaining the legality of the award. See 36 Ops. Atty. Gen. 33.

lished service by sea along the whole line of the proposed air mail route.

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"I would repeat that the contract in question is for a route most difficult to serve but at the same time of very great and far-reaching importance not only to the public but to the whole future of transportation by air. Failure would be a serious blow to the prestige of American aeronautical enterprise."

Panagra commenced operations under this contract on July 12, 1929, and later, on October 12, 1929, inaugurated operations from Santiago to Buenos Aires after the route was ordered extended by the Postmaster General in August, 1929.

Until November of 1929 operations on Panagra's routes as far south as Guayaquil, Ecuador, were conducted by aircraft and personnel of Pan American because Panagra had not until that time secured operating rights in Colombia in its own name. By the end of 1929, Pan American's routes having been extended by the Postmaster General, it was operating regular service along the north coast of South America to Paramaribo, Dutch Guiana.

The joinder of Pan American and Grace, with their complementary resources, in the formation of Panagra to establish American air transportation on the west coast of South America was of decisive importance to the Postmaster General in awarding to Panagra the United States Mail contract for the west coast route. Such a contract was the umbilical cord of any proposed American flag international air operations in South America, without which they could not long survive. It is beyond peradventure that the successful inauguration of an international air transportation system in South America, with the flying equipment then available, with no airfields or ground facilities but what defendants supplied or arranged themselves, with only the air to fly in and the ground to land on, was

in the truest sense a pioneering endeavor.[9] The technical and physical resources possessed by each of the defendants, together with the financial and diplomatic assistance rendered by this government, were pooled to facilitate the success of Panagra, the American entry on the west coast of South America.

In September, 1930, Pan American acquired the assets of New York, Rio & Buenos Aires Line, Inc. (NYRBA), an American company which had been formed in March, 1929, by persons independent of Pan American and Grace with the purpose of operating an airline service under mail contracts obtained in South America, from Miami through the Caribbean, and down the north and east coasts of South America to Buenos Aires, and across the Andes to Santiago, Chile.

The key to the successful maintenance of an American airline in Latin America was a United States Post Office mail contract, without which a company could operate only at a heavy loss. The joint company (Peruvian Airways) which preceded Panagra operated at a loss on the west coast prior to the awarding of the contract to Panagra for that route. Pan American had instituted competitive services on the east coast with NYRBA prior to September, 1930, without the benefit of a United States mail contract for that route and it too, as well as NYRBA, sustained heavy losses amounting to about $40,000 a month. It nevertheless so operated in order to put itself in position to compete with NYRBA in bidding for a proposed United States mail contract for the east coast route. NYRBA had two wholly owned subsidiaries, Trimotor Safety Airways, Inc. and NYRBA do Brasil, and together they had secured contracts from the governments of Argentina, Brazil, Uruguay, Chile and Venezuela, for the carriage of mail from those coun-

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9 See a newspaper account of 10-day inaugural flight, Buenos Aires to Miami, Chicago Daily News, October 18th–November 1, 1929. See, too, *Latin American Air Service Case*, 6 C.A.B. 857, 865.

tries north to the United States. These contracts were at considerably lower rates of pay than those awarded by our Post Office Department, and because of the scheme of its contracts, it created a problem for the Post Office Department with possible embarrassment with countries on the west coast of South America who contracted with Panagra. The situation also created a problem with respect to the award of a satisfactory mail contract if there was to be competitive bidding between NYRBA and Pan American. The Postmaster General determined not to advertise for an airmail route down the east coast of South America from Paramaribo unless some satisfactory arrangement could be made between Pan American and NYRBA, and apparently suggested that the two companies merge. Pan American was concerned about possible antitrust implications in the proposed merger and sought advice and "clearance" from the Department of Justice.

In a memorandum to that department dated July 18, 1930, Pan American set forth the details of the proposed acquisition of all of the assets of NYRBA, the competitive situation between the two companies, as well as with respect to foreign airlines in the area, and also as regards competition from steamships along the proposed route. Pan American demonstrated the economic impossibility of continued competition between itself and NYRBA on the same route without an air mail contract from the United States Post Office, and that it was the policy of the Post Office Department not to subsidize two contractors in South America for the same route. Pan American pointed to the diplomatic and financial assistance given to its foreign competitors by the French, English and German governments, and that effective similar assistance from the State Department could be rendered to only one American operator in the same area. In this memorandum Pan American disclosed its interest in Panagra, indicating that Panagra was part of the Pan American system, and also that the assets of NYRBA included NYRBA's wholly owned subsidiaries.

Pan American made a persuasive argument to indicate that the acquisition would be of substantial benefit to the public, and was of particular interest to the Post Office Department, the Department of Commerce, and to the State, War and Navy Departments as well. On August 1, 1930, the Department of Justice responded, *inter alia*, as follows: "Upon the basis of the information thus furnished the Department does not at the present time deem that any action by it would be warranted if the proposed acquisition should be effected. This, however, cannot under the law limit the full freedom of the Department to take such later action as future developments, further information or a subsequent consideration of the questions involved may in its judgment warrant."

Pan American made no mention of its earlier agreements, first oral and then written, with regard to its purchase of control of SCADTA, the acquisition of 84% of whose stock was thereafter completed in April, 1931. It claims that both the oral and written agreements were required by the seller to be kept strictly confidential until the sale was completed, and that Pan American adhered to that condition, disclosing it, one of its officers testified many years later, only to the Secretary of State on a personal and confidential basis. What effect disclosure of its impending acquisition of SCADTA may have had on Pan American's application for "clearance" from the Department of Justice we can only speculate.

As we said above, Pan American did acquire the assets of NYRBA in September, 1930, together with the stock of NYRBA do Brasil as contemplated in its memorandum to the Department of Justice, and in October, 1930, the name of that subsidiary was changed to Panair do Brasil. (In 1935, Pan American secured its own operating concession from Brazil and then reduced its stock in Panair do Brasil to 58%, and again in 1947 to 48%. In 1940 SCADTA merged with another Colombian airline and the name was changed to AVIANCA. Pan American received 64% of

the stock of AVIANCA, which was reduced in 1945 to 48% and as of 1954 it owned 38% of AVIANCA. The 1940 merger was precipitated by the Colombian government which passed a law in that year requiring the majority of SCADTA stock to be owned by Colombian Nationals. How it disposed of its stock and to whom, and what the relationship was or is, was not disclosed by the evidence.)

On September 24, 1930, the Postmaster General awarded to Pan American a contract for a route from Paramaribo down the east coast to Santos, Brazil, with an option to extend the route to Buenos Aires. Pan American inaugurated service to Buenos Aires under this contract in 1931.

This last extension of Pan American's east coast route rounded out the United States air mail service throughout South America. The entire northern and eastern part, and the northern portion of the western part from Miami to the Canal Zone were operated by Pan American, and the southern portion of the western part from the Canal down the west coast and across the Andes operated by Panagra.

In August, 1931, Pan American organized UMCA, a Delaware corporation, to which was assigned a concession theretofore granted by the Colombian government to one of its nationals for a route between Medellin, Colombia, and Panama. The concession required as a condition that the proposed airline become associated with an American company to be approved by the Colombian government. The assignment to UMCA, in which Pan American acquired a 75% voting interest, was approved by the Colombian government and UMCA commenced operations in July, 1932. (In 1947 Pan American acquired all of the stock, which it retains to this day. In 1948 Pan American sought approval from the C.A.B. of its proposal to acquire all of the assets of UMCA and, though the hearing examiner recommended it, the C.A.B. has never acted on the

recommendation. In 1959 UMCA applied for leave of the C.A.B. to abandon its certificated operations.)

Pan American and Panagra merely had landing rights in Colombia along their international routes at this time. The acquisition of UMCA enabled Pan American to carry traffic into Colombia, which was one of the reasons for its acquisition and, additionally, Pan American considered this route as a link in a possible short-cut route across South America to Buenos Aires and Rio de Janeiro. SCADTA had a monopoly in the carriage of Colombian mail and a virtual monopoly for all intra-Colombian traffic, partly because of the air policy of the Colombian government and partly because of a tripartite agreement among Pan American, Panagra and SCADTA, whereunder SCADTA withdrew from operations into Ecuador in competition with Panagra and withdrew its opposition to the efforts of Pan American and Panagra to acquire landing rights in Colombia. In return Pan American and Panagra agreed not to press for rights to operate within Colombia.

In 1934 Panagra formed a Peruvian company, Aerovias Peruanas, in order to protect its position in that country. At the same time the original joint company, Peruvian Airways, was dissolved. After about four years of very strong competition between Panagra, and its Peruvian subsidiary on the one hand, and Faucett Aviation Company, the leading Peruvian company, on the other hand, with both sides sustaining heavy losses, Panagra and Faucett reached an agreement whereby Panagra's subsidiary withdrew from all operations in Peru, and Panagra acquired 20% of the stock of Faucett. Panagra's local service in Peru was to be limited to that incident to its international itinerary and its tariffs for such local service was to be based upon its international rates, which would effectively maintain a differential between its fares and those charged by Faucett. Faucett was thereafter to confine its activities to local service within Peru and to re-

frain from entering into any connection with any international company without the consent of Panagra.

In 1944 Panagra submitted this agreement to the C.A.B. for its approval. In 1949 the C.A.B. disapproved the above provisions which were accordingly cancelled by Panagra and Faucett. Today Panagra's stock ownership in Faucett amounts to about 19%. A law passed by the Peruvian government in 1949 effected a suspension of Panagra's rights to carry local traffic (cabotage) along its international route. Panagra re-established their local services in Peru within their international lines in 1952, after agreeing with Faucett, in consideration of the latter's not opposing such re-establishment, to calculate its rates for such local service on the basis of its international rates, and not to advertise within Peru, such local services.

At the instigation of the State Department and in cooperation with other federal agencies, Panagra in 1941 acquired a stock interest in a Bolivian airline, Lloyd Aeros Bolivianos (LAB) and entered into a management agreement to manage that line. This acquisition was pursuant to this country's de-Germanization program with respect to South American airlines. Panagra's stock interest in this company amounts to about 21% today.[10]

The prime objective of the defendant airlines in the first decade of operations was to secure and solidify the position of their main international trunk lines throughout the countries in South America through which they ran. They considered the maintenance of local subsidiaries essential to that end and the bulwark of their international links. Through these lines they sought to obtain the good will of the nationals of these countries and the cooperation of local governments. They also served as feeder lines for their through routes and as the instrumentalities through which they could secure from the local govern-

10 To complete the picture, Pan American also owns today, some 30% of the stock of a Venezuelan airline, AVENSA.

agreed to subscribe equal amounts to the capital stock of a corporation to be formed under the laws of Delaware to operate an airplane service in Peru with the view to ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile. The agreement pro-

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agency to continue during the life of transportation contracts undertaken by the company.

"The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

Very truly yours,

W. R. Grace & Co.
William F. Cogswell,
Assistant Secretary."

"September 7, 1928.

"W. R. Grace & Company,
70 Hanover Square,
New York City

Attention: Mr. William F. Cogswell.

"Dear Sirs:

"We beg to confirm the arrangement set forth in your letter of August 31st.

"Supplementing paragraph four, however, we would point out the fact that in the event you decide not to take up a substantial interest in a jointly owned Company, organized or to be organized for the purpose of submitting a bid on the contract for carrying mails between Panama Canal and Valparaiso then, and in that event, we would prefer to bid on the contract through the medium of Pan American Airways, Inc., or some other wholly owned subsidiary.

"If this were done, we would arrange to allow you, if you desired, to take a further stock interest in Aviation Corporation of the Americas, in addition to the $25,000 referred to in paragraph five.

"Our Directors are delighted that we are to be associated with your firm in the development of air transportation on the West Coast of South America, and we look forward to a most pleasant and profitable relationship.

"We would appreciate your advising us if this letter, in connection with yours of August 31st, covers your understanding of our arrangement.

Yours very truly,

AVIATION CORPORATION OF THE AMERICAS

By J. T. Trippe,
Vice President."

vided that the two companies would cooperate in studying the costs of operations on such route and that if Pan American determined that it was advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the amount contributed by Grace to the stock of the company which was to operate in Peru should be treated as a contribution to the stock of the company making the bid and Grace was to have an option to take an additional interest in such a company not to exceed 50% of the total capitalization. Pan American was to "have charge of the operations of the service from the Canal to Valparaiso" and the Grace houses on the west coast of South America were to act as agents for the company.

Pan American's study of this route indicated that even with the revenue of a United States mail contract, conditions did not then justify its undertaking to install an air transportation service in that area. By combining with Grace, however, they mutually concluded that they could operate a west coast service more economically than could any other air transportation company, including the French and German companies.

The Delaware company referred to in the letters was formed under the name "Peruvian Airways Corporation" and it began operations in Peru in September, 1928, under the Peruvian concession and contract referred to above. In January, 1929, Grace and Pan American secured operating rights in Chile and, as stated earlier, Pan American's negotiations with SCADTA had set the stage for a concession from Colombia. On January 31, 1929, the Post Office Department issued an advertisement for a contract for Foreign Air Mail Route No. 9, from the Canal Zone down the west coast of South America to Santiago, Chile, with an option in the Postmaster General to extend the service from Santiago across the Andes to Buenos Aires, Argentina, and Montevideo, Uruguay.

Panagra was formed on January 25, 1929, as South American Airways Corporation and changed to Pan Ameri-

ments the rights to carry local traffic along the points of the international lines. These subsidiaries served also as a wedge whereby defendants could successfully oppose the efforts of local national companies that sought to secure monopolies within their own countries. It was a costly and losing proposition, however, to maintain these subsidiaries. It was more economical and ultimately more advantageous to acquire a stock interest in an influential national company.

Conclusions Re Conspiracy

The acquisitions, alleged predatory practices,[11] division of territories[12] and agreements with competitors have long been known to this government, and there is no dispute as to the facts and surrounding circumstances. The dispute relates to the inferences which we are asked to draw from the evidence. The argument for the inference of conspiracy is appealing to a mind bent on finding conspiracy.

From the outset, both Grace and Pan American had to fully appreciate the dangers of competition between themselves for the air mail contract about to be advertised for the west coast route. Neither of them might get it, or one could succeed but probably at a prohibitively low bid. They also must have realized that conflicts would arise in their partnership.

Grace was aware of the competitive potential of air transportation with its large steamship investments. So was Pan American aware of potential competition, but its ambitions were far more extensive than Grace's in air transportation at that time. Pan American sought to extend its system throughout Latin America. It could not do so without all of the mail contracts to be awarded. Grace's interest

11 See discussion *infra*, page 65 *et seq.*

12 See discussion *infra*, page 29 *et seq.*

was confined to the west coast of South America where it was strongly established, and th . was the only area where it faced competition from an airline. The award of a Post Office contract for each sector of South America, in effect, assured the American contractor of a monopoly in that sector insofar as American flag operations were concerned, and the invaluable assistance of the State Department and Post Office Department in the carrier's relations with the countries along its route.

By joining with each other in a joint venture on the west coast, Grace on the one hand would be assured against the entry of an independent American airline competitor into its west coast domain, and gain time to acquire the experience and know-how of this new industry, and one day perhaps to succeed to complete domination of the joint company. Pan American on the other hand would be substantially free from American flag competition in the rest of Latin America. Their method of organization of the joint company appears calculated to give each negative control of the company to insure against the possible treachery of the other to expand the op rations of the company in competition with their respective independent lines, and their divisions of operational and agency functions of Panagra was similar added protection.

Each of these two defendants occupied a strong bargaining position. They needed the attributes of each other in the operation of an airline on the west coast, and they feared the consequences of each other's opposition. Together they were an irresistible combination bidder to the Post Office Department. Their combined interests on the west coast could insure the greatest possibilities for the success of an American carrier in that area, and at the same time protect their independent systems from the competition of such carrier. An agreement to divide the territory of operations between the two air carriers is consistent with such a design, and it is equally consistent for Grace

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to have agreed not to seek to extend their joint company to the United States in competition with Pan American.

The conspiracy theory is appealing, because if it were found to be the fact a court of equity would not hesitate to order both defendants to divest themselves of their interest in Panagra, and to thereby definitively rectify an unhealthy situation that exists in the South American phase of American aviation, attributable to Pan American and Grace's joint ownership. *Pan American-Matson-Inter-Island Contract*, 3 C.A.B. 540, 548; *Panagra Terminal Investigation*, 4 C.A.B. 670, 678; *Latin American Air Service Case, supra*, at 914. See, too, discussion *infra*, page 45 *et seq.* re C.A.B. litigation.

We have carefully considered all of the evidence relating to the conspiracy charge and, in our opinion, no such conspiracy existed between Grace and Pan American. The only agreement we can find that approaches conspiracy is their understanding that Pan American and Panagra were not to parallel each other's routes. In our opinion this was not a conspiracy to monopolize and restrain trade and commerce.

The defendants' dominant position in South America which they enjoy today, and have over the years, may be explained in simple terms without unlawful implications: Pan American and Panagra got there first as American flag carriers (discounting NYRBA) by virtue of the foreign airmail contracts of the first decade and, since under the aegis and control of the C.A.B. and the President with respect to the certification of additional carriers since 1938, have enjoyed the South American market, so far as American flag carriers are concerned, exclusively until the start of operations by Braniff in 1948.

For approximately 20 years these two defendants were the sole American entries in South America and as such had exclusive claim to such aid that could be expected from this government in solidifying their position to the advantage of this country. They built up their services and good

will correspondingly. And if it were not for the action of Pan American in suppressing Panagra's extension to the United States, they would in all probability remain the only two American carriers in South America. At the time of Braniff's certification, at the end of World War II there was expected a significant increase in traffic sufficient to support a third carrier in the South American market. That traffic has not materialized. Moreover, foreign competition has increased. Cf. *New York-Balboa Through Service, Reopened, supra* (concurring opinion).

Prior to 1938 there was no legislation regulating commercial aviation. The C.A.A. makes express provision for the approval by the C.A.B. of mergers, acquisitions and all manner of agreements between air carriers with antitrust immunity. 49 U. S. C. , 488, 492, 494. The absence of such legislation in the experimental stage of international aviation did not obviate the necessity for such action in that period by carriers within the framework of the antitrust laws. The experience gained between 1928 and 1938 must have emphasized the need therefor. Defendants' acquisitions and agreements among themselves and with foreign airlines may well have been approved by the C.A.B. were it then in existence. We find substantial reasons and circumstances then extant that might have justified such approval. Under the circumstances, we feel constrained to accept those consistent with innocence from among the equivocal inferences permissible from the evidence presented.

The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America. Grace had the established branches and agencies on the west coast and all the facilities used in connection with the operations of the steamship line that could be used to such advantage in connection with the new airline opera-

tion. Grace also had widespread commercial contacts, a respected trade name and considerable influence in the countries along the proposed route. Pan American was further advanced than any other American company in the carriage of foreign air mail, and had the technical aviation skill which Grace lacked at that time. The union of their physical and technical resources assured the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (6th Cir., 1898), modified and aff'd 175 U. S. 211.

Grace's principal interest at the time was in transportation. Its interest in a new technique of transportation which to a large degree was most surely to generate its own traffic is readily understandable quite apart from consideration of the threat of competition with its steamships. Grace recognized the potential of air transportation in the commercial development of the South American countries in which it had extensive investments, and it had a great deal to offer to enhance that development. We cannot, from the evidence adduced, make out an unlawful intent to restrain aviation competition in the Grace participation in the formation of Panagra, and the history of Grace's activity in the affairs of Panagra preponderatingly demonstrates that it fostered and fought for Panagra development and expansion. To be sure, Grace sought continuously to control the management of Panagra, and its efforts were crowned with success in 1939. Its desire to control the management can as readily be explained as an aggressive business instinct, intensified in the light of the conflicting, containing attitude of Pan American, as well as from the standpoint of its asserted attempt to monopolize all transportation on the west coast. We are buttressed in our choice of the former in that the record before us fails to disclose any antitrust violations on the part of Grace vis-à-vis Panagra, unless

it be *per se* violative of the Sherman Act for Grace to own the stock that it does in that company. We will defer discussion of that issue to later in this opinion.

Clearly, Grace did not contemplate joining in the venture as a mere investor, though the terms of its agreement with Pan American as disclosed in the two letters, *supra*, did not contemplate that it would actively manage the line. The question of its ascendency to that management, since it occurred in 1939 subsequent to the creation of the C.A.B., is one that the C.A.B. has always been in a position to remedy if it in fact is in contravention of the C.A.A. §408(b) (49 U. S. C. 488(b)).[13] The apparent reluctance of that body to entertain the issue probably is rooted in dilemma. If Grace were divested of the management Pan American would succeed thereto. The progression would be from merely theoretical to further and more complete actual restraint and suppression. If Pan American is ordered to divest itself of Panagra the question of Grace management of Panagra may then be disposed of by the C.A.B.

Division of Territories

Consideration of the defendants' agreement or understanding with respect to the respective spheres of operations for the two airlines, when viewed in the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved,[14] as well as the relation of the parties one to the other and the nature of the industry itself,

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13 Cf. *New York-Balboa Case*, Order No. E-5737 (Sept. 21, 1951). See, also, C. A. A. §§409 and 415 (49 U. S. C. 489 and 495).

14 For example, between 1947 and 1958 the government gave Pan American $61,480,000; Panagra $13,925,000 and Braniff $15,461,000 by way of pure subsidy.

compels the conclusion on our part that it involved no violation of the antitrust laws.

The defendant airlines had to be self-contained enterprises involving large amounts of fixed capital outlay for facilities that would normally be made available to them in this country by governmental authorities. They had to build their own landing fields, provide their own meteorological service, and maintain their own communications system, and in connection with building up operating and traffic organizations they of course had to maintain offices in all of these countries and establish good will with the governments and peoples through whose territory the lines must pass. And in addition to technical and equipment problems they contended with substantial competition for the available traffic from foreign lines that had established themselves before the defendants and who were maneuvering for monopoly concessions that would have precluded defendants from their markets. The State Department actively assisted defendants in defeating the foreign company designs for monopoly concessions and in securing American operating rights along their routes. The contracts awarded by the Post Office Department defined the international route of the contractor, and so to a large extent defined the area of development and expansion of any such contractor. The Post Office policy during the years 1928 to 1938 was to award but one contract for each route, in effect to subsidize one American carrier in a particular sector. The ideal route pattern as envisaged by the C.A.B. today is to have two carriers, Pan American and a merged "Panagra-Braniff," and the only difference from that existing prior to Braniff's entry would be the extension of "Panagra-Braniff" to the United States. Competition among American carriers under the policy of the Post Office Department under the foreign mail contracts, was economically impossible, and most likely detrimental to the sound development of American flag service, which would have complicated or embarrassed the effective rendition

of diplomatic assistance from the State Department, and actually cause a waste of public monies. Competition between Panagra and Pan American certainly was not encouraged by this government. On the contrary, there appears to emerge from the evidence presented a definite policy of the government approving a sort of "zoning" for the operations of the American international carriers in the nature of east and west coast spheres as was ultimately arranged between Pan American and Panagra. Agreement not to parallel each other's service in South America seems perfectly consistent with the air transportation policy of this country in those formative years. It is only with respect to the northern extension of both lines to the United States that restraint of competition between Pan American and Panagra whether by agreement or unilateral action, in our opinion, falls under the condemnation of the antitrust laws. This relates primarily or wholly to the question of Panagra's extension to a United States terminal.

There is no doubt that defendants came to agree upon a division of territories; the dispute relates to when such agreement came about and what its details were. Pan American says that it and Grace reached agreement prior to the formation of Panagra that Panagra was to operate only on the west coast of South America from the Canal Zone to Valparaiso, Chile, and that was to be the entire extent of its operations. Pan American was to conduct operations throughout the rest of South America, including operations within the interior of South American countries, as well as its other services in the Caribbean and Central America, and between the United States and the Canal Zone, for which areas it had already secured the United States mail contracts. By reason of the mail contract ultimately awarded to Panagra, its terminal in Chile was changed to Santiago, and the scope of Panagra operations was extended to Buenos Aires and Montevideo. The gov-

ernment apparently accepts Pan American's version of the agreement.

Grace on the other hand contends that their territorial agreement was entered into *after* Panagra's formation and was, in general terms, to the effect that Panagra was to operate on the west coast and in all the countries of the west coast through which its international mail line ran, as well as over the Andes to Buenos Aires and Montevideo, and that there was no intention one way or the other contemplated *mutually* by them with respect to possible extension of Panagra's line to the United States. As for pre-Panagra agreement, Grace says that it was merely to combine their efforts, talents and resources in a jointly owned company to operate an air transportation service on the west coast, and specifically, to bid on the proposed mail contract for that west coast route. Grace contends that it was only in November, 1929, after Panagra's route had been extended by the Postmaster General at its request, to Buenos Aires, that any detail was added to their east coast-west coast understanding, and this concerned Panagra operations in the Argentine.

Pan American had organized an Argentine subsidiary (ALAS) in June, 1929, to operate locally in Argentina to give it legal standing there, and to develop cabotage business for Pan American's operations. Because of the operations of this subsidiary, ALAS, Panagra and Pan American reached an understanding whereby Pan American and ALAS had the exclusive right to Argentine traffic throughout that republic with the exception of that traffic between the points on Panagra's route—between Buenos Aires and Mendoza, Panagra had exclusive right, and between Buenos Aires and Montevideo, Panagra would compete with ALAS.

The understanding was again given substance after Pan American had acquired NYRBA, when in September, 1930, ALAS made some flights to Santiago from Buenos Aires, parallel to Panagra's route. Pan American put a stop to these flights when Grace complained.

Their agreement with respect to the Argentine figured again in the development of Panagra in 1935 when Pan American finally consented to Panagra operating a service from Tacna, Perú, to La Paz, Bolivia, on condition that there would result no prejudice to the arrangements or understanding relating to the traffic interests of Panagra in Argentina. This question arose because the Bolivia operations were sought by Panagra as a prerequisite to its instituting an alternate route to Buenos Aires through Bolivia and several Argentine cities. Panagra instituted such an alternate route to Buenos Aires in 1937. Pan American withheld its consent to that alternate route hoping to get Panagra to pay for a portion of the expense of its acquiring NYRBA, because NYRBA supposedly had incurred expenses in developing part of the route over which the new alternate route of Panagra's passed. No payment was ever made.

In early 1937 Panagra, at the invitation of the Colombian president, wanted to divert its international line into interior cities of Colombia, viz., Cali and Medellin. SCADTA had opposed this deviation and, in addition, threatened to extend its own line to Ecuador in competition with Panagra. Pan American opposed the proposed Medellin stop because it would divert traffic from its wholly owned subsidiary, UMCA, operating between Medellin and Panama. Panagra agreed to settle for the Cali stop, and Pan American helped overcome SCADTA opposition thereto, as well as to overcome the threatened competition of SCADTA to Ecuador. The Cali stop was approved by Panagra's board in January, 1938, Pan American's nominees abstaining.[15]

In 1951 Pan American's subsidiary, Panair do Brasil, at the instigation of the government of Brazil extended its routes from Rio to Santiago and Lima. Grace had sought

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15 After the Through Flight Agreement of 1946, discussed *infra*, page 50 *et seq.*, Pan American approved of Panagra's extension to Medellin and Bogota, Colombia.

to have Panagra apply to extend its routes from Lima to Rio some time earlier but Pan American would not agree.

We find that the agreement between the defendants as to spheres of operations and its evolution was substantially in the manner described by Grace. We accept the version of Pan American, not as respects mutual agreement between it and Grace, but as representing its own intentions for the destiny of Panagra.

An agreement not to duplicate or parallel each other's service in South America would seem to be consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938, and it was this type of competition from Pan American, through its subsidiary ALAS, and through SCADTA which Pan American controlled at the time, against which Grace invoked successfully the territorial agreement. Pan American, through its negative control of Panagra was always capable of preventing paralleling of its routes by Panagra, and Pan American over the years has in addition successfully delayed or prevented within-South America extensions of Panagra which would not have resulted in paralleling its operations.

For the purposes of this suit, however, we find sufficient basis in the Pan American suppression of Panagra efforts to extend to a United States terminal upon which to predicate our conclusion that Pan American monopolized that sector of commerce between the United States and South America and between the United States and the Canal Zone to warrant relief against it.

Pan American's Restraints Against Panagra

The thrust of the government's evidence was directed to the alleged monopolization or attempted monopolization by Pan American of air transportation between the United States and South America. While it also charges monopo-

lization by Grace of air and steamship transportation, that charge is treated *infra*, page 61 *et seq.*

The market or the "area of effective competition" which is the subject matter of this inquiry is air transportation between the United States and South America, particularly the west coast. Whether it should include only American flag carriers or all carriers is debatable, but to resolve it most favorably to the defendants we will treat the problem separately and jointly. It would seem fair, too, because of the areas involved to subdivide, as the government has, several appropriate markets or relevant market segments and correlate these to United States flag carriers and all carriers.

In the early 1930's less than 5% of the passengers between the United States and South America were carried by air, but since 1954 the airlines are handling 80% of such traffic. Pan American is the largest international airline in the world and in 1957 flew 3,500,000,000 passenger miles. One-third of its business is in Latin America.

There does not exist a completely accurate record of statistical data measuring the volume of traffic moving by air or sea between the United States and South America. The available sources developed by different agencies of the government and using somewhat different reporting procedures are those prepared by the C.A.B. and the Immigration and Naturalization Service (I.N.S.). The OD survey of the C.A.B. shows the origin and destination of air travellers and their complete air journeys; it shows the airlines involved in carrying people between those points and is limited to passengers who fly on commercial airlines in scheduled flights and on a revenue basis. It is limited, however, to carriers, as far as international traffic is concerned, who are certificated by the C.A.B. and includes only those passengers who either entirely or in some part of their journey used United States flag air carriers. It does not cover passengers who travelled out

of the United States entirely on foreign flag lines. In addition it is published for only two months of the year, viz., the months of March and September. In this case the latest one used by the government economist was the September, 1957, survey.

The other source of statistical information is the I.N.S. series. This information does cover foreign flag carriers but it does not provide the name of the carrier involved. It makes no distinction between passengers who fly on a non-revenue basis or on non-scheduled flights or in non-commercial planes. It does not include passengers in a military class. Its total statistics, therefore, are larger than the comparable statistics for the United States flag carriers as collected by the C.A.B. and therefore are more advantageous to the defendants if those statistics are used exclusively.

We find that by the use of both, a reasonably reliable picture of the relative positions of Pan American and Panagra is reflected and their relative participation in the traffic shown.

From these statistics it is obvious that Pan American and Panagra have retained a very high degree of dominance over other United States flag airlines in the transportation of passengers between the United States and South America. In fact they have either together or separately participated in the movement of from 75% to 88% of the passengers who used United States flag airlines between the United States and South America during the period 1950-1957.

With respect to such journeys between points of origin (or destination) in 16 eastern states[16] and South America,

16 Includes the New England states and the states of New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia and Florida. It is estimated that this area accounts for about two-thirds of the United States-South American passenger traffic.

Pan American and Panagra have participated in carrying from 88% to 96% of the passengers during 1950-1957.

Panagra is the dominant United States flag airline participating (almost entirely with Pan American) in the movement of passengers between the United States and points in western South America (western Colombia, Ecuador, Peru, Bolivia, Chile and Argentina, other than Buenos Aires). During the 1950-1957 period Panagra carried between 79% and 86% of this traffic and from 84% to 93% of the eastern United States, western South America traffic.

Pan American is the dominant United States flag carrier participating in the transportation of passengers between the United States and eastern South America (eastern Colombia, Venezuela, the Guianas, Surinam, Brazil, Paraguay and Uruguay). Without any participation by Panagra it accounted for 66% to 85% of this traffic and between 84% to 95% of the eastern United States–eastern South America traffic during the 1950-1957 period.

Both lines, Panagra and Pan American, fly to Buenos Aires by separate routes (Panagra via western South America and Pan American by eastern South America) and are obviously competitive in that category. Together they have accounted for 92% of all the passengers carried by United States flag airlines between the United States and Buenos Aires, and 94% of such traffic between eastern United States and Buenos Aires during the 1950-1957 period. During this period Panagra (in participation primarily with Pan American) carried more than one-half and Pan American (with no Panagra participation) carried two-fifths of the United States-Buenos Aires traffic on United States flag lines.

Using the I.N.S. statistics so as to round out the picture and include the foreign flag carriers, we find that Pan American and Panagra have participated in the transportation of approximately 50% of the total number of

passengers travelling by air between the United States and South America on United States flag and foreign flag carriers during the period from 1952-1957. Approximately one-sixth of the total traffic was carried by other United States flag carriers and about one-third was accounted for by foreign flag carriers in this period.

The dominance of Pan American and Panagra in the United States-South America traffic market is obvious since the traffic that was not carried by Pan American and Panagra (approximately 50% of the total) was divided among at least ten[17] other airlines, i.e., eight foreign flag carriers and two other United States flag carriers. In this connection, too, it should be observed that two of the foreign flag carriers, Avianca and Avensa, that carry passengers between the United States and South America are "affiliates" of Pan American, i.e., Pan American owns a substantial minority share of their outstanding stock.

The I.N.S. statistics show that with respect to passenger traffic between the United States and the four western South American countries (Ecuador, Peru, Bolivia and Chile), Panagra participated in carrying almost 75% of the total traffic in the 1952-1956 period and about one-half of the total in 1957. Between the United States and the seven eastern South American countries (Venezuela, Brazil, British Guiana, French Guiana, Surinam, Paraguay and Uruguay), Pan American alone accounted for about two-fifths of the total traffic during the period from 1952-1957. Between the United States and Argentina, Pan American and Panagra shared better than three-quarters of the traffic during the 1952-1957 period. Between the United States and Colombia, Pan American and Panagra (each serving different parts of that country) accounted for one-third of the total traffic in the 1952-1957 period, while the foreign flag traffic was three-fifths of the total. However, practically all of this foreign flag traffic is carried by Avianca.

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17 According to Pan American there are at least 18 foreign airlines operating between the United States and South America or Panama.

Pan American has submitted evidence and expert testimony on the relevant markets and area of effective competition. Some of its statistics, however, include sea passenger traffic added to the air traffic, thus considerably diluting the percentages testified to by the government economist and supported by its statistics. This was done in a post-trial brief based upon certain evidence the government submitted insofar as the complaint related to Grace. We reject this combination of air and sea traffic figures as not close substitutes and not truly the same relevant market.[18] It is significant, too, that at the trial Pan American's expert witness and employee produced no statistics from their own records showing the share of air passenger traffic by Pan American or Panagra in any relevant market.

Accepting the government's evidence and rejecting Pan American's as deficient, we find that there is and has been for many years active substantial competition between Pan American and Panagra in the transportation of air passengers to the United States and South America to a substantial degree and that, but for the Pan American suppression of Panagra, that competition would have been much greater.

Finding, as we do, the existence of such competition the next inquiry is whether defendant Pan American monopolized or attempted to monopolize such trade and commerce. We find that it did both.

We need not discuss alleged violations of §1 of the Sherman Act in this part of the opinion. We have heretofore found no conspiracy between Grace and Pan American to restrain or monopolize, and we concluded in substance that their original joinder was not a combination in restraint of trade; we found that their combination was a legitimate one with legal ends—to foster the development

18 Cf. *Times-Picayune Publishing Co. v. United States*, 345 U. S. 594, 612 n. 31.

of a new form of transportation. That the combination, or joint enterprise subsequently developed differences of opinion as to the growth and development of their jointly owned company does not, in our opinion, operate to make their joinder or combination, *in limine*, one in restraint of trade, or their combination presently, *qua* combinatien, one in restraint of trade.

The antitrust restraints that we find here requiring judicial remedy were unilaterally imposed by Pan American and for that reason, if they are illegal at all under the Sherman Act it must be under §2 thereof. More specifically, they must constitute monopolization or attempt to monopolize.

In our opinion, Pan American's successful blocking of Panagra's extension to its own terminal in the United States constitutes an unlawful exercise of the power it had to exclude Panagra as a competitor in the United States-South American market, and to thereby maintain its virtual monopoly position over that market at least until the entry thereinto of Braniff in 1948. Thereafter and to date, it remains the dominant carrier in that market and maintains its power to participate in substantially all United States origin or destination traffic carried by Panagra through its continued suppression of a Panagra-United States extension.

While we were not provided with any statistical breakdown of the passenger traffic carried by air between the United States and South America for the years prior to 1950, it is clear that Pan American and Panagra's share was 83% or better. And it is safe to say that prior to 1947 substantially all such traffic was carried by Pan American alone. It was not until then, 1947, when the C.A.B. approved the Through Flight Agreement, that Panagra planes actually flew beyond the Canal Zone to the United States; but then it was only in participation with Pan American pursuant to such agreement.

Since 1938 half of Panagra's board of directors (Grace nominees) sought to file a voluntary application with the C.A.B. for an extension of Panagra's routes to the United States. Pan American would not consent to such action and directed its nominees on Panagra's board accordingly, because "it would not be in the interest of our stockholders [Pan American stockholders] for our directors to authorize an application by [Panagra] to extend north of [the Canal Zone] in competition with Pan American."

Pan American has never retreated from this position which is predicated upon the proposition that Panagra is part of the Pan American system; that it (Panagra) was so set up to be the west coast link of the Pan American system, and that if it were permitted to extend to a United States terminal its character would be changed to that of a competitive carrier. Pan American has expressed the fear that if Panagra were permitted its own route to Miami the effect upon Pan American's service between the Canal Zone and Miami would be disastrous, because the greater portion of Pan American's traffic between those points on its direct flights was traffic destined to or originating at points on Panagra's routes. Generally, all through traffic between points on Panagra's west coast route and Miami or other United States cities conveniently reached through the Miami gateway would be almost wholly diverted from Pan American. The same would go for most any west coast traffic bound for a United States point conveniently reached from any United States terminal to which Panagra may be certificated, whether it be Miami, New Orleans, New York or any other city.

It is beyond dispute therefore, that Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes. Prior to Braniff's entry into the market (and Delta's too), and prior to the Through Flight operations, Pan American en-

joyed a virtual monopoly of the United States-South American market. We assume that it had come by that monopoly legally however, originally; but we find that it maintained that monopoly illegally, in contravention of the Sherman Act when it utilized its stockholdings and representation thereunder on Panagra's board of directors to frustrate Panagra's entry into the market. Pan American's justification for its blocking actions is bottomed upon a fallacious predicate; Panagra is *not* part of the Pan American system except to the extent that it is reduced to that status through the subjugating exercise of Pan American's negative control over its destiny. Panagra is not a subsidiary of Pan American; its co-equal stockholder, Grace, never so intended it to be (and never intended to be a mere investor in Panagra), nor has Panagra's abstention from independent entry into the United States-South American market been the result of *concerted* action between it and Pan American. If Pan American were the majority shareholder in Panagra or if Panagra were a wholly owned subsidiary of Pan American it might make a decisive difference in this case. Cf. *Report of the Attorney General's National Committee to Study the Antitrust Laws* (1955), pp. 32-34. If Panagra were wholly owned by Pan American we have no doubt that its extension to a United States terminal would have been effected decades ago.

Pan American, to be sure, has contributed substantially to the success of Panagra within the territorial limits to which Pan American has permitted its operations. Pan American has always considered Panagra as part of the Pan American system, and its major premise is that its capital investment in Panagra was dedicated to a limited operation on the west coast from the Canal Zone south.

Panagra, however, is an independent entity and the dedication of American taxpayer money,[19] without which it could

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19 See footnote 14 *supra*, also, *Local, Feeder and Pick-up Air Service Case*, 6 C.A.B. 1, 3.

not have survived as Pan American so readily argues, is paramount to any private investment consideration due Pan American. It most certainly must have been thought by this government that it was subsidizing two air transportation companies to develop the South American markets, each with equal opportunities in time to operate to this country and not necessarily by parallel routes.

If the competitive effect of a Panagra extension to the United States would have been as disastrous as feared by Pan American, it would have been a genuine issue for it to urge before the C.A.B. in opposing such extension which that body would have to weigh together with the public convenience and necessity in favor of the extension. Pan American then and since has arrogated to itself the function of determining what the public convenience and necessity requires. The economic arguments advanced by Pan American to justify its actions in preventing Panagra's extension to the United States are irrelevant to the issues of this case. Its intentions in excluding Panagra from that sector are beyond doubt.

While we have discussed the market which we find Pan American has monopolized or attempted so to monopolize, as the United States-South American sector of air transportation of passengers by all carriers, foreign and American, there is a more limited market over which Pan American has maintained a more complete monopoly and which would appear to be one that may be appropriately considered separately. That is the United States-Canal Zone sector of air transportation. Under the Civil Aeronautics Act such transportation would be deemed "overseas" transportation, as distinguished from "foreign" transportation, and as such would be reserved exclusively to United States flag carriers. Cf. *Pan American-Matson-Inter-Island Contract, supra.*

Prior to Braniff's certification and entry into this market, Pan American was the sole United States carrier therein.

Its actions in suppressing and thereby excluding Panagra from the United States terminal to which Panagra aspired are equally applicable to a consideration of this more limited market, and compel the same conclusion of monopoly or attempted monopoly.

Pan American argues that under the C.A.A. exclusive control over the entry into the market is vested in the C.A.B. and the President (§§401 and 801, 49 U. S. C. 481 and 601) and that, therefore, it does not have power to exclude competitors, i.e., monopoly power. It does not and cannot deny, of course, that it has the power to and has effectively excluded Panagra from the market in question.

In our opinion, under the circumstances of this case Pan American need not have the affirmative power to ultimately approve Panagra certification for its own route to the United States to qualify as a monopolist. What Pan American seeks to do is to confound power of admission with power of exclusion. It is the exercise of the latter that the Sherman Act condemns.

We would like it clearly understood that it is not our opinion that every defendant who exercises similar negative control over a single potential competitor and thereby excludes such competitor from a relevant market necessarily monopolizes thereby. It is a relative concept which can only be applied in a given context. Here, the excluded competitor is the most potential of a very limited number of competitors and one that enjoys a substantial share of the relevant market, and in which share the exclusionary action of Pan American guarantees it participation. One result is that competition between the two for their significant shares of the market is to a substantial degree restrained. Other factors we considered are the nature of the industry, the size and strength of the two companies involved, and the limited market potential.

We feel that the affirmative blocking of a Panagra application to the C.A.B. is sufficient under the facts pre-

sented to make out the violation by Pan American of monopolization and that the following history of Pan American's actions gives a definitive picture of its 20-year subjugation and restraint on Panagra. It will also show the attitude of the C.A.B. and its consequent frustration towards Pan American's antagonistic and purposeful restraint.

We start with 1938, the turning point for United States flag international aviation. With the enactment of the C.A.A. that year the period of foreign airmail contracts ended; under the Act mail pay or subsidy was to depend, not upon contract, but upon the needs of each certificated carrier in contributing to the maintenance and development of air transportation. In accordance with the objectives set out in §2 (49 U. S. C. 402) thereof, in sum, to promote an economically and technically sound air transportation system, the C.A.B. was authorized to prescribe the extent of air transportation which each certificated carrier may engage in, and to allow for regulated and economic competition designed in part to stimulate research and experimentation and to induce refinements which would inure to the benefit of the foreign and domestic commerce, the Postal Service and the national defense.

A policy of regulated competition replaced the "no-parallel" policy of the first decade, and with it and the new policy with respect to subsidy, it became feasible for Panagra to seek to extend its routes to the United States. Such an extension would give it direct access to one or more of the major gateways for through traffic between the United States and Latin America and was entirely normal and desirable from Panagra's viewpoint as it would then no longer be so dependent upon connections with Pan American at the Canal Zone for onward passage of a large part of its traffic travelling between the United States and the west coast of South America and Buenos Aires. See *Panagra Terminal Investigation Case, supra,* at 671. However, such an extension of Panagra represented a s[illegible]us com-

petitive threat to Pan American which ran counter to the latter's philosophy that it alone should conduct all international commercial air transportation operations under the United States flag, a philosophy which Pan American unavailingly urged upon the C.A.B. whenever competition for Pan American was proposed. See e.g., *American Export Airlines, Inc., Trans-Atlantic Route Service Case*, 2 C.A.B. 16; *Northeast Airlines, Inc., North Atlantic Route Case, supra* at 324; *Latin American Air Service Case, supra* at 861, and *Hawaiian Airlines, Ltd.; Hawaiian Case*, 7 C.A.B. 83, 103.

Grace's efforts of 1938 to secure Pan American cooperation for a northern extension of Panagra resulted in a compromise embodied in an agreement dated February 14, 1939, whereunder Grace nominees succeeded to the presidency and management of Panagra, Pan American promised to provide an adequate connecting service between Miami and the Canal Zone,[20] and Grace was to cease agitating for the United States extension of Panagra. However, in late 1940 Grace again pressed the question of Panagra's extension because at that time American Export Lines was evidencing an interest in a New Orleans-Canal Zone service which Grace feared might eventually extend down the west coast in competition with Panagra. Grace's suggestion that Panagra file an application with the C.A.B. for this route was rejected by Pan American which, incidentally, had already filed its own application therefor. Pan American further decided that its nominees on the Panagra board would not attend any meetings at which this subject was to be discussed. Thereafter, Grace brought the matter before the C.A.B. and that body ultimately instituted a proceeding which became known as Docket 779, the Panagra Terminal Investigation. The intermediate

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20 Pan American's connecting service was a source of much friction between defendants and its alleged inadequacy gave rise also to threats by Grace to inaugurate its own air transportation service between Miami and the Canal.

steps are set out chronologically in the C.A.B. opinion in the case as follows:

> "When efforts to secure the filing of an application by Panagra failed, Grace, on May 3, 1941, filed a petition for leave to intervene in the *New Orleans* case alleging that since Panagra was not filing an application Grace proposed to file an application in its own behalf for a certificate for a route between the United States and the Canal Zone. Grace was granted leave to intervene, but did not file an application for a certificate during the time that case was pending.
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> "On December 16, 1941, Grace filed a petition and complaint, Docket No. 707, requesting the Board to institute a proceeding pursuant to section 401(h) of the Act to alter, amend, and modify Panagra's certificate of public convenience and necessity so as to make the northern terminal of its route a point in the United States such as Miami or Tampa, Fla., or New Orleans. On April 29, 1942, Grace filed a second complaint, Docket No. 744, requesting the Board to require Pan American Airways Corporation, pursuant to section 411 of the Act and sections 7 and 11 of the Clayton Act, to cease and desist from certain matters alleged by Grace to be in violation of those sections, and to divest itself of its ownership of the stock of Panagra to the extent necessary to divest itself of its present negative control of Panagra; and also renewing its request in Docket No. 707.
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> "No formal steps were taken by the Board in connection with the Grace petitions in Dockets Nos. 707 and 744 until September 1942. During this period all action in the *New Orleans* case also was postponed under the Board's policy, announced December 12, 1941, of suspending further action in all proceedings pending before it under sections 401(d) and 401(h) of the Act 'in order that the immediate and maximum attention of air carriers and their personnel, and that of the Civil Aeronautics Board, as well as other Government agencies concerned, may be available for the most efficient discharge of the emergency demands' arising out of the war.

"However, the Board did explore the possibility of working out a voluntary settlement of the controversy between Pan American and Grace. Numerous conferences were held by the Board with both parties. Finally, the Board suggested that the parties enter into an agreement under which sufficient shares of the two stockholders would be transferred to an independent public voting trustee or trustees to permit the election to the Panagra board of an independent director or directors, or under which such an independent public director or directors might be otherwise appointed, who would be able to break the deadlock resulting from the equal division of the ownership of Panagra stock between Pan American and Grace. After it became apparent that no satisfactory voluntary arrangement could be mutually agreed upon by the parties and that all efforts to mediate the differences between them would be unsuccessful, the Board, on September 10, 1942, * * * [instituted Docket 779]" 4 C.A.B. 670, 671-72.

In May, 1944, the C.A.B. dismissed the proceeding without reaching the merits of the question of the public convenience and necessity involved in a Panagra extension. The dismissal was on the ground that the Board was without power to compel such an extension in the absence of a voluntary application from Panagra. The Second Circuit Court of Appeals, *W. R. Grace & Co.* v. *C.A.B.*, 154 F. 2d 271 (1946), reversed the C.A.B. and remanded the proceeding saying: "if Grace * * * could prove that the opposition of Pan American * * * to Panagra's applying for an extension was due to 'illegality and fraud' it would follow that this proceeding should be regarded as a voluntary application for the extension" (pp. 281-82). On June 10, 1946, the Supreme Court granted Pan American's petition for certiorari, 328 U. S. 832.

In the meantime, in consolidated hearings, the C.A.B. had been considering a number of applications by carriers seeking, *inter alia*, certificates to engage in operations between the United States and the Canal Zone. The C.A.B.

Examiners and its Public Counsel reported that while the extension of Panagra to a terminal in the United States would best serve the public interest they considered such recommendation to be foreclosed by the decision of the Board in Docket 779, and consequently, they recommended that routes between the United States and the Canal Zone be awarded to other carriers. The brief of the Public Counsel noted, in substance, that Panagra was entitled to a certificate for a United States-Canal Zone route which would provide the west coast countries in South America with the convenience of one-carrier service to the United States, but since the action of Pan American prevents the recommendation of the "best possible service, we must turn to the next best solution." *W. R. Grace & Co.* v. *C.A.B.*, *supra*, p. 282 n. 5.

Nevertheless, the C.A.B. thereafter divided evenly on the question of authorizing other carriers to South America and for want of a majority, additional services between the United States and the Canal Zone also failed. The President thereafter directed the Board to provide for the extension of an additional carrier to South America and Braniff was ultimately selected. In the course of its opinion the C.A.B. had occasion to say that it had long recognized the desirability of a voluntary application which would permit a determination by it of the question of extending Panagra from the Canal Zone to a point in the United States, and that if such extension were made to Miami or New York, or some other point on the eastern seaboard, the eastern part of the United States would be afforded a fast direct service to the west coast of South America and to Buenos Aires. The Board declared that Pan American and Grace, in the public interest, "cooperatively should enable Panagra to apply for access to the east coast of the United States." *Latin American Air Service Case, supra,* at 914.

Thus, while it is true that the C.A.B. has never explicitly stated that it would grant an application if one were volun-

tarily presented by Panagra, it is unrealistic to suppose that it would not have. We find it difficult to conclude otherwise than that the Board waited in vain for such an application, or stated differently, for Pan American to cease blocking Panagra in the interest of the public welfare.

Braniff's certification was in May, 1946. Pan American and Panagra entered into the Through Flight Agreement in July, 1946. Under this agreement Pan American theoretically charters Panagra planes on flights north of the Canal Zone. Actually, what Pan American does is to share with Panagra in the expenses and profits of such flights by Panagra planes flying over Pan American's routes.* After the Board certificated Braniff, Panagra was faced with two alternatives: (1) to enter into the Through Flight Agreement and immediately improve its competitive position with Braniff, or (2) continue to press for its own certificates. Under the latter course Grace, on behalf of Panagra, would continue the litigation which it had initiated before the C.A.B. in 1941 which was then pending review by the Supreme Court on certiorari to the Second Circuit.

The outcome of the appeal of course was uncertain, and assuming it were favorable to Panagra, the matter would still then have to return to the C.A.B. for a consideration of the merits of the action. Panagra simply could not afford the delay which this course of litigation would entail. Its economic life hung in the balance. If Panagra did not get to the United States, at least by way of a through flight interchange agreement with Pan American, and if Braniff commenced such operations under the authority granted by the Board, Panagra's economic position would rapidly deteriorate. Cf. *New York-Balboa Through Service, Reopened,* 18 C.A.B. 501, 505.

Grace and Panagra succumbed to the restraint of Pan American and acquiesced in the Through Flight Agreement.

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* In 1955 the C.A.B. approved an interchange agreement among Pan American, Panagra and National Airlines under which Panagra's planes fly to New York from Miami over National's routes.

The C.A.B. approved the agreement in May, 1947;* it did not approve the suppression of Panagra by Pan American in the process as Pan American contends. Such approval was in no sense necessary to do that which was authorized. (See further discussion re Pan American's claim of immunity *infra*, page 52.)

The loser of course, as always, was the public. Braniff has proved to be an ineffective competitor; the United States share of the market has declined; foreign competition has increased, and the federal subsidy has greatly increased.[21] The C.A.B. has expressed a fear for the economic effects of a successful conclusion of this suit by the Attorney General, and the emergence as a consequence of an independent Panagra in South America. *New York-Balboa Through Service, Reopened, supra.* It should be noted that in 1957 Grace, on behalf of Panagra, filed with the C.A.B. applications for Panagra's own routes to Miami, New York a d to the west coast of the United States. Action thereon is suspended pending the outcome of this suit.

Pan American has monopolized or attempted to monopolize the market in issue and in the process has seriously restrained competition from Panagra and caused the creation of a situation that cannot be righted so long as it retains the negative control that it now possesses over Panagra.

Pan American's conceptions of the perpetual limited character of Panagra operations are now and ever have been based on its own unilateral intentions in joining with Grace to form a west coast airline. That intent, and the economic

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* On November 24, 1947, on Pan American's motion the Supreme Court dismissed the writ of certiorari previously granted, as moot. 332 U. S. 827.

21 In 1946, Pan American's Latin American Division showed a profit of $2 million and in 1953 it required $11 million subsidy; Panagra in 1946 required just under $1 million which rose to over $2 million in 1953; Braniff required about $560,000 in 1948 and its break-even need in 1953 was over $3 million. *New York-Balboa Through Service, Reopened, supra* (concurring opinion).

arguments which it has advanced in its brief against Panagra's extension to the United States are no defense to the monopoly charges *sub judice*. Its economic arguments would have been proper to urge before the C.A.B. upon hearings on the merits of an application by Panagra for such extension. While Pan American's conduct in preventing Panagra from clearing the first hurdle for that extension, to wit, presentation of an application to the C.A.B., may be understandable from a selfish business standpoint of one faced with making a choice, nevertheless the quandary was of Pan American's own making and its choice was unlawful.

Pan American Immunity

Pan American asserts that it is immune from antitrust violations because the Civil Aeronautics Board approved the arrangements made between it and Grace respecting the area of Panagra's operations. It points out that in 1947, again in 1950 and again in 1955 the C.A.B. approved the Through Flight Agreement between Pan American and Panagra and the related Parent Company Agreement between Pan American and Grace. It states that the approval was given after a most thorough inquiry from which it appeared abundantly clear that the Through Flight Agreement was in lieu of Panagra's coming to the United States and represented a reconciliation and settlement of the controversy between Pan American and Grace over Panagra's coming to the United States.

It relies on §414 of the C.A.A. (49 U. S. C. 494) which relieves any person affected by an order of the C.A.B. made under sections 408, 409 or 412 (49 U. S. C. 488, 489, 492) of the operations of the antitrust laws.

The claim of immunity is without substance because no such approval was ever sought or obtained from the Civil Aeronautics Board.

What the Board approved was in effect an interchange agreement between Pan American and Panagra which was completely silent with respect to the problem here involved and a related management agreement which contained, among other things, a provision that Pan American would consent to a Panagra application for service to the United States in the event of transfer, modification or cancellation of Pan American's own certificate. This provision consenting to an extension in the event of the contingencies described did not negative consent under other circumstances or in terms constitute an undertaking or an understanding that Pan American would continue to block Panagra's efforts for expansion.

One of Pan American's principal officers testified, "There was nothing in the agreement • • • to prevent Panagra from applying for an independent franchise to enter the United States" and that there was no side agreement or understanding to that effect. He was specifically asked, "Is it understood between the parties that Panagra will not so long as this contract is in effect apply for such independent entry?" He answered, "No." The president of Panagra when asked whether the agreement implied "that those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States," he replied, "I do not so testify and that is not the fact. The only agreement between us on that point is in these papers."

Not a word in the opinion of the Board (8 C.A.B. 50) approving the agreements is devoted to this question, nor is there any basis for an inference that it understood that it was approving a prohibition against Panagra's seeking an independent franchise.

The Board's approval of the Parent Company Agreement was only in relation to the interchange agreement. It was done in order to prevent avoidance of its jurisdiction over contracts affecting air transportation (and which would

be subject to approval if made by operating carriers) through the device of their being made by parent companies not in themselves operating carriers and whose contracts would not normally be subject to the Board's approval.

Since the contracts do not specifically provide that Panagra should not seek its own certificate and the parties themselves testified that the contracts should not be so construed the Board cannot be held to have approved and granted antitrust immunity to Pan American to use its negative control over Panagra to prevent its applying to the Board for its own certificate to fly to the United States, nor has it ever approved or granted antitrust immunity in relation to Pan American's and Grace's control over Panagra. This control antedates the Civil Aeronautics Act and is beyond the purview of §408.[22] Exemptions from the antitrust laws are not favored and should be accorded only on a showing of compliance with the precise manner and method prescribed by Congress. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 226-27. This has not been done.

Primary Jurisdiction

Pan American in its post-trial brief has raised the defense of primary jurisdiction. It argues after trial that the allegations of the complaint are within the jurisdiction of the Civil Aeronautics Board and the President. Therefore, the court should not decide the matters in issue until after the Board and the President have acted.

The primary jurisdiction rule is, "a principle, now firmly established, that in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not

22 *Railroad Control of Northeast Airlines*, 4 C.A.B. 379, 386; *National Air Freight Forwarding Corp.* v. *C.A.B.*, 197 F. 2d 384, 389 (D. C. Cir. 1952).

be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure." *Far East Conference* v. *United States*, 342 U. S. 570, 574-575.

Whether or no such defense should have been raised by motion or by answer in accordance with Rule 12 F. R. Civ. P. when the complaint was served six years ago is academic since we find it without merit. Parenthetically, although of no legal significance, this latest tactic of Pan American is characteristic of its litigious nature and of its determination to continue and persevere in its restraint on Panagra.

There can be no question that only a United States District Court has jurisdiction in actions under the Sherman Act, and that the Civil Aeronautics Board does not (15 U. S. C. 4). The necessary defendant W. R. Grace and Company, not being an air carrier, would not ordinarily be subject to the jurisdiction of the Board, except perhaps on the question of acquisition of control and management of an air carrier. See note 13 *supra*.

In *S.S.W., Inc.* v. *Air Transport Ass'n of America*, 191 F. 2d 658, 661-62 (D. C. Cir., 1951) the court analyzed the approach to accommodation of court and agency roles in the following language: "[I]n each case brought against a regulated company under the antitrust laws, the subject matter and remedy afforded by the regulatory statute are compared with that of the antitrust laws. If the latter either cover subject matter outside the scope of the Com-

mission's power or provide a remedy which the Commission may not give, then they remain in effect to that limited extent. This sort of approach gives the greatest possible effect to congressional intent. It subjects problems intended to be dealt with in a uniform manner within the framework of a particular industry to the agency empowered to regulate that industry. At the same time, it gives effect to the antitrust laws in those areas not carved out from them by more specific economic regulation."

The complaint in this case relates to many matters that existed prior to the creation of the C.A.B. and over which the C.A.B. would have no jurisdiction. In addition, the major relief prayed for in the complaint is that the court order Pan American and Grace to divest themselves of their stock holdings and other interests in Panagra. Such relief or the power to grant it is not vested in the Civil Aeronautics Board as to pre-1938 acquisitions[23] and such power exists only in a court of equity. In fact there is no provision in the antitrust laws for such a drastic remedy. *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 602.

Applying the suggested test in *Air Transport Ass'n*, it is clear to us that so much of the subject matter in the government's complaint is outside the scope of the Board's power and it seeks a remedy which the Board may not give, that Pan American's argument and motion, if it is a motion addressed to the primary jurisdiction of the Board, must be and is denied.

As a practical matter this case is here because the Civil Aeronautics Board found itself powerless to act and requested the Attorney General on two occasions to institute this suit.

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23 See note 22 *supra*.

Claim of *Per Se* Violation by Grace

The government contends that the Sherman Act makes unlawful the mere ownership or control by a steamship company of an airline operating a parallel route.

Leaving aside for later discussion the factual questions whether or no Grace competes with Panagra and whether Grace has in any respect exercised any restraint on Panagra, it is undisputed that Grace owns the Grace Line and that it carries the bulk of passengers who travel by sea between the Atlantic coast of the United States and the west coast of South America.

The government stakes its claim of *per se* violation on a series of railroad cases relating to mergers of competitive transportation companies and a district court case in Hawaii. The railroad cases the government relies on are *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Union Pacific R.R. Company*, 226 U. S. 61, and *United States* v. *Southern Pacific Company*, 259 U. S. 214. We hold that these cases are inapposite. In *Northern Securities Co.* the problem related to the acquisition by banking interests through a holding company of the controlling interest in Northern Pacific Railroad and the Great Northern Railroad, which systems operated parallel lines through the northwest. Actually the roads served different geographical areas although they had common termini and the actual competition between the two was small. The Supreme Court in striking down the arrangement held that (p. 327), "[t]he mere existence of such a combination and the power acquired by the holding company as its trustee, constitute a menace to, and a restraint upon that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected." In *Union Pacific* the Supreme Court again held that the consolidation of two great competing railroads by a transfer to one of a dominating stock interest

in the other created a combination which restrained interstate commerce. In the *Southern Pacific* case, the court again condemned as a menace to freedom of commerce the combination, and resulting unified control, of established and naturally competitive rail systems, springing from the formation of holding companies rather than as a result of normal and natural growth (p. 230).

None of these cases presents a situation comparable to Grace's interest in Panagra in 1929 but rather, involve combinations of railroad giants of many years existence where the obvious purpose was to eliminate competition. It is apparent that the principle upon which these cases were decided applied to combinations of existing companies which were in substantial competition with one another prior to their combination. Cf. *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 531; Handler, Industrial Mergers and the Antitrust Laws, 32 Columbia Law Review 179, 212; Friedmann, Antitrust Law and Joint International Business Ventures in Economically Underdeveloped Countries, 60 Columbia Law Review 780.

In 1929 Grace's 50% ownership in the joint enterprise to establish a system of transportation which did not theretofore exist and which participation appears to have been of considerable importance in the decision of the Postmaster General in awarding Panagra the mail contract for the west coast of South America is, to our mind, not a *per se* violation of the antitrust laws. Except for the district court decision in Hawaii discussed hereafter there never before has been such a holding and the history of Grace's 50% participation in Panagra has not demonstrated any result thereof that must form the basis of a *per se* doctrine, i.e., that Grace's half ownership in Panagra from its very nature must result in restraints injurious to the public. Grace's stock ownership in Panagra cannot be said to have such a "pernicious effect on competition and lack of any redeeming virtue" as to conclusively presume that ownership to be an unreasonable restraint on trade and commerce.

Northern Pacific Railway Co. v. *United States*, 356 U. S. 1, 5.

The government originally relied on *Hawaiian Airlines, Limited* v. *Trans-Pacific Airlines, Ltd.*, an unreported case (Civil 817, D. Hawaii, 1949), as an authoritative decision on the "precise issue." We surmise that the government no longer places such reliance on this case. Actually it was an oral decision of two sentences by Judge Metzger on a motion for summary judgment. In that case the Inter-Island Steamship Navigation Co., Ltd., had been operating a steamship service in the Hawaiian Islands from 1883. In 1927 Hawaii passed a statute designed to encourage the organization of an air carrier within the territory by creating certain tax exemptions. In 1929 Inter-Island organized the Hawaiian Airlines. Having failed to interest the public in a subscription of the air carrier's stock, Inter-Island took up the majority of the shares and from 1929 through the early 1950's both the ship and air operations were carried on by it. During the same period its steamship operations were curtailed considerably. In 1947 Trans-Pacific Airlines, which also operated in the area, filed a triple damage counterclaim under the Sherman Act against Hawaiian and Inter-Island, alleging the mere ownership of the airline by the steamship company violated that law. At the conclusion of the arguments on a motion for summary judgment the court rendered the following decision from the bench: "It is my firm opinion that the creation of Hawaiian by Inter-Island to operate over routes that were parallel to its own operation at a time when it is said that there was no air carrier competing in any way with Inter-Island that that was a violation of the antitrust laws of the United States. I am convinced that that is so by the weight of the interpretations put on the act and the motion for summary judgment * * * by the Trans-Pacific Airlines is granted in conformity with this conviction."

Grace has called our attention to the fact that further proceedings in that suit resulted in a revocation of Judge

Metzger's order and the entry of a contrary ruling. The government has in effect conceded this.

At the subsequent trial the court (Driver, *J.*) instructed the jury: "You are instructed that it was not per se in and of itself an unreasonable restraint of trade or commerce for Inter-Island, a surface carrier, to organize and assume control of Hawaiian, an air carrier operating over parallel routes." The jury returned a verdict for Hawaiian and Inter-Island and the court entered judgment dismissing Trans-Pacific's counterclaim.

There is, however, another case in the District of Hawaii in which, the government agrees, the "precise issue" was raised but a contrary conclusion arrived at, i.e., contrary to Judge Metzger's. This is *United States* v. *Inter-Island Steam Nav. Co.*, 87 F. Supp. 1010 (D. Hawaii, 1950). In that case Judge McLaughlin stated the issue as follows: "Is there a violation of the Sherman Anti-Trust Act in the mere organization and control of a subsidiary air common carrier by a water common carrier for the purpose of having the former transport passengers over routes substantially paralleling the latter's routes and serving areas substantially similar to those served by the latter?" (p. 1014).

In coming to a conclusion diametrically opposed to that of Judge Metzger, Judge McLaughlin held: "There is nothing in the statute to prevent a corporation from entering a virgin field, and, through a subsidiary or otherwise, engaging in a pioneer enterprise. That was precisely what was done in 1929 by Inter-Island in the instant case. The antitrust laws were enacted to promote and not to retard the economic growth of the nation. In a word, the Sherman Act is not an instrument of stagnation. The Supreme Court repeatedly has given a clean bill of health to 'an expansion to meet legitimate business needs'." (pp. 1016-1017).

The government's *per se* argument seeks to succor support from the various Congressional Acts relating to the

control of interstate commerce, and more particularly, §408(b) of the Civil Aeronautics Act, 49 U. S. C. 488(b), and from a number of administrative decisions under those acts.

But we are here concerned with the question of Sherman Act *per se* illegality and it seems to us that statutes relating to the jurisdiction of administrative agencies to approve or disapprove, *inter alia*, acquisitions of control by surface carriers of air carriers, *provided* such acquisitions do not restrain competition, are irrelevant. Especially is this so, we feel, where the particular acquisition with which we are concerned was at no time subject to the provisions of those statutes. *Railroad Control of Northeast Airlines, Inc., supra; National Air Freight Forwarding Corp.* v. *C.A.B., supra.* We hold, therefore, that it was not, and is not, *per se* violative of the Sherman Act for Grace to acquire and now own 50% of Panagra's stock.

Grace Line's Competition With Panagra

The government has submitted evidence in support of its charges that there is active passenger competition between Panagra and Grace Line as between the continental United States and the west coast of South America. It also called witnesses and introduced some statistics to prove that at the present time there is an area of competition between them, and ships and airplanes generally with respect to cargo, and that within the near future this competition will greatly increase.

Speaking broadly, steamship transportation and air transportation are in some measure competitive, though the government frankly admits that services rendered by airplanes and ships are distinct and that each has its own inherent advantages. But that they are competitive in some sense does not resolve the problem. We think everyone will concede that a passenger by sea from New York to

any port on the west coast of South America has bought and hopes to enjoy a commodity or service substantially different from an air journey to the same place. In the first place the time element is so vastly different, e.g., from New York to Santiago by air takes today about 12 hours—by steamer 20 to 21 days. Steamer is also more expensive. The Panagra fare from New York to Lima, for example, depending on tourist or first class, ranges from $308.80 to $390.80; by steamer $515 to $1510 in the winter season, and $435 to $1220 in the summer season. Query: Are these interchangeable commodities? Does a substantial portion of the travelling public substitute one for the other with variations of rate and service? *Times-Picayune Publishing Co.* v. *United States, supra; United States* v. *E. I. du Pont de Nemours & Co.*, 351 U. S. 377. Is the passenger who is willing to spend six weeks on a steamer the same as a person who wants to fly somewhere and back in a hurry? Is the person who desires to transact business in a far away South American city and return a potential steamship passenger to and from the same city?

We are not persuaded that the proof in this case shows that the market is the same. This does not mean that we disagree with the Court of Appeals for the District of Columbia Circuit in *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289, which rejected the argument advanced by Lehman and Pan American that there was no competition between Pan American and United Fruit Line in the limited area of passenger tourist traffic going to the Caribbean area from the Gulf Ports of the United States. In that case the C.A.B. examiner had found that although the companies did not compete for tourist passenger traffic between all points of the Caribbean, both United Fruit and Pan American would be competing for tourist travel between the United States points and the same vacation travel area. Both the C.A.B. and the Court of Appeals adopted that finding as being logical and reasonable. In the instant case the market was not so narrowly defined nor was there proof of actual competition, aside from bare statistics.

But assuming that the market is the same, let us examine the statistical evidence submitted by the government on the issue of the existence of substantial passenger and cargo traffic competition.

Not only does W. R. Grace and Company, the defendant, own the Grace Line, it has many interests, commercial, banking and manufacturing. The operating revenues of Grace Line for the year 1958 were less than one-fifth of its total sales and operating revenues. The only route of Grace Line that can be said to be in competition with Panagra is its Trade Route 2 between the Atlantic coast of the United States and the west coast of South America. It operates three other routes.

Trade Route 2, called Line A, provides regular liner service between substantially the same areas served by Panagra although it is not co-extensive, each serving areas not covered by the other. Line A accounts for one-fifth of Grace Line's total passenger revenues and for less than one-half of its freight revenues. One of the most important points of difference is that Buenos Aires is a city not served by Grace Line and is the most important city in South America served by Panagra. But we will assume this difference in geography would not be sufficient for a finding that they are not serving identical markets. They cater primarily to two different interests—Panagra sells passenger transportation predominantly whereas Grace Line's principal service is the carriage of freight. Between the years 1950 and 1958, Panagra carried less than four-tenths of 1% of the tonnage of cargo carried by Grace on its Line A.

Between the years 1950 and 1958 the ratio of passengers carried by Panagra and Grace was about 25 to 1 in favor of Panagra, e.g., in 1958 Panagra carried 128,776 passengers while Grace's Line A carried 4,347. During that same period Panagra's increase of passengers carried was 25% while Grace's volume remained substantially constant.

Even adopting the statistics of the government as showing substantial passenger competition between Grace Line and Panagra, there is no proof nor could we find that the passengers thus carried by ship were potential air passengers or that they were passengers whose needs or desires could only be met by sea transportation.[24] Air transportation is quick, efficient and functional transportation for passengers over long distances. Steamship companies cater to those who have the leisure and inclination for a sea voyage. They are not, under the proof submitted, two forms of transportation "reasonably interchangeable" and do not make up a single market.

We hold, too, that the same reasoning applies with respect to cargo traffic. The airlines cater to traffic that demands high speed transportation of either relatively small lightweight shipments or heavier shipments where the cost of transportation is not a factor or an important factor. Steamships on the other hand meet the need for low cost transportation of all kinds of commodities, particularly those which are heavy or bulky.

It is true that the government has submitted evidence tending to show that the air cargo field, particularly as it relates to heavy cargo, is on the upswing and that possibly in the future it will present an effective reasonably interchangeable service with sea cargo carriage.

We were furnished no statistics of any substantial value to show a relevant market. A few instances were shown where Panagra carried cargo between the same points as Grace Line did. However, there was no evidence of the rates or other factors. The sum total of the evidence shows that as between the two the volume of cargo carried by Panagra as compared to Grace was minuscule. The most the government experts and the witnesses connected with transportation by air who testified on its behalf showed

24 Cf. *Latin American Air Service* case, *supra* at 867.

was that indications are that there is developing *some cargo* competition between Grace and Panagra, and between shipping companies and airplane companies, i.e., in some situations it may be competitive. What was clear is that all-cargo air transportation is in an experimental stage and most of the operations are marginal at best.

But the government does not prove violations of the antitrust law by showing that Grace Line competes with Panagra, assuming that it does. It must show that Grace has restrained or monopolized trade or commerce, or attempted to do so. This the government has not done. When Grace entered the virgin field of air transportation in 1929, through Panagra, it was the dominant surface carrier to the west coast of South America. Its entry at that time was not illegal. Through defendants' efforts and with the help of this government Panagra became and remains the dominant air carrier in that area, not through unlawful efforts of Grace or Panagra. If anything has been established it is that Grace has been the only one of Panagra's two partners that has persistently and continuously attempted to improve its service and extend its routes to the United States. Not only has it not prevented the development of Panagra but absent its continuous objections to Pan American's restraints this case would not be here.

Panagra

The case against Panagra may be divided into three categories, (1) the alleged unlawful acquisition of stock in competing airlines and consequent restraint; (2) by reason of its dominant power in air transportation it allegedly has impeded development of competition between it and Braniff, and engaged in restrictive practices to restrain and impede Braniff from utilizing airports, terminals and other facilities in South America, and (3) price fixing.

Much of the proof in support of these charges relates to matters long since resolved or matters within the special competence of the Civil Aeronautics Board. §§408, 411, 412, C.A.A. (49 U. S. C. 408, 491, 492).

The acquisitions complained of relate to Panagra's interest in LAB and Faucett, previously discussed. Today Panagra owns 21.5% of LAB stock and about 19% of Faucett. As pointed out above, Panagra acquired its stock interest in LAB at the specific request of this government and in aid of its de-Germanization program in South America in the early years of World War II. We have heretofore held in effect that such acquisitions involved no Sherman Act violations and in the subsequent years its minority interests have not been shown to be of any significance antitrustwise.

As to LAB, Panagra admits that its motives were not completely patriotic and concedes that it hoped there would be some economic benefits earned from its affiliation. After the war when its management contract with LAB expired, its influence and control decreased accordingly. It has only two nominees on a board of directors of six and LAB is in active competition with it on two route sectors in Bolivia.

With regard to Faucett, it and Panagra are in competition on the Lima/Talara sector of Panagra's international route. Panagra received its stock in Faucett when it sold Aerovias Peruanas which had been formed to help Panagra obtain cabotage rights in Peru. All of this has been well known to the C.A.B. Those provisions in its original agreement with Faucett that might be considered to be in violation of the antitrust laws were removed after the C.A.B. disapproved of the agreement in 1949. The amended agreement, which includes a provision for the Panagra stock interest and its two of the nine directors, was specifically approved by the C.A.B. in 1950.

Also with respect to Faucett, it was the government's claim that Panagra, relying on its agreement with Faucett, prevented that carrier from entering into an interline agreement with Braniff. We are not persuaded. The most that the proof showed was that when Braniff attempted to make such an agreement with Faucett, Faucett refused. No evidence was offered to show that the refusal was at the direction or with the approval of Panagra. On the contrary, it was shown that Panagra was never consulted by Faucett on that question at all.

The government did prove, and proved conclusively, that in the late 1940's Panagra carried on a bitter and consuming price war with PIA, an alleged Peruvian air carrier. After unsuccessfully opposing PIA's certification as a foreign flag carrier it soon found that PIA was making serious inroads on Panagra's traffic by accepting payment for tickets to the United States in local Peruvian currency.

Panagra took up the challenge and it, too, accepted local currency. It lost money, but so did PIA. As Panagra so well states, "fare cutting is a chronic disease in the air carrier industry, and it is a very serious disease; PIA died of it.". It expired in 1949.

The government also proved, without alleging so in its complaint, that prior to 1951 Panagra and Pan American participated in many price fixing arrangements. Exactly what the terms of these arrangements were is not shown but, reading between the lines, we are convinced that it was a common practice. However, in 1946, International Air Transport Association (IATA), formed for the purpose of setting rates for all its members in international air transportation, was approved by the C.A.B. and became effective as to United States-South America carriers in 1951. Panagra is a member—so is Pan American. The rates agreed upon at IATA conferences are approved by the C.A.B. pursuant to §412 of the C.A.A. (49 U. S. C. 492)

and such agreements, pursuant to §414 of the C.A.A. (49 U. S. C. 494), are thus clothed with antitrust immunity. No proof was offered by the government relating to any such agreements after 1951, except that it did show that prior to conferences Pan American and Panagra would discuss prices and rates in violation of the rules of IATA. But since Pan American is Panagra's agent for such purposes with C.A.B. approval how else could it act?

The remaining charges relate to Panagra's opposition to Braniff and its stubborn resistance to lending a helping hand to a new competitor, Braniff; also to the petty and amusing instances of retaliation and business skullduggery. The government evidence seems to picture Braniff, an experienced carrier, as an innocent tyro in the air transportation business, being buffeted and barked at by Panagra. The government showed that even though Panagra was helpful and courteous to Braniff in its initial survey flights after it was certificated, it became pigheaded and uncharitable when it insisted upon being paid for the use of its facilities and supplies and services. We get the impression that Braniff wanted everything for nothing, including routes not certificated. The action of Panagra in trying to keep some of Braniff's employees out of the Rotarians and warning their employees not to fraternize with Braniff's employees, and bribing a South American petty official to turn over manifests in order to learn what passengers Braniff was carrying, are all colorful incidents but hardly add up to antitrust violations.

Not much more need be said other than to add that despite all of Panagra's restraints and restrictive practices against Braniff, Braniff continues to get its fair share of the South American traffic. Although Panagra has been in the market for 30 years and Braniff a little over 10 years it does more than half as much business as Panagra.

In short, all of the charges against Panagra relate to matters in the distant past or are minor incidents in a

highly competitive field. They are matters of doubtful antitrust significance and without present day consequences.

Instead of showing any Sherman Act restraints or monopolization by Panagra the proof convinces us that the competition is real and active and expensive to the American taxpayer and as the foreign competition increases it will become more expensive.

Defense of Laches

Finally, Grace and Pan American have interposed the affirmative defense of laches. In view of our disposition of the case against Grace we need only discuss this defense as it applies to Pan American, and as to it, the defense is untenable.

In the course of our opinion it was made to appear, we believe, that governmental efforts to alleviate the adverse effects of Pan American's restraints upon Panagra began as early as 1941 and continued thereafter even subsequent to the institution of this suit. Any delay in bringing this action was due to concerted efforts designed to work out a compromise and to thereby avoid suit if possible in the interests of all concerned including Pan American. It can hardly be said to be inexcusable delay and certainly no prejudice to it has been shown by Pan American as a result thereof.

Decree

In accordance with all of the foregoing, it is hereby ordered and decreed that the complaint, insofar as it relates to W. R. Grace and Company and Pan American-Grace Airways, Inc., be and is dismissed; and that the government is entitled to a decree in its favor as against Pan American World Airways, Inc. In order to fashion such final decree it is ordered that Pan American show

cause on the 24th day of March, 1961, why such decree should not contain a provision directing it to divest itself of its stock in Panagra.

This opinion is filed in lieu of findings of fact and conclusions of law pursuant to Rule 52(a), F. R. Civ. P.

THOMAS F. MURPHY
U. S. D. J.

Dated New York, N. Y., March 8th, 1961.

2. Final judgment by the Honorable Thomas F. Murphy, *U.S.D.J.* in the court below.

U.S. DISTRICT COURT
FILED
MAY 8, 1961
S.D. of N.Y.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 90-259

UNITED STATES OF AMERICA,

Plaintiff,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC.,

Defendants.

Final Judgment

This case having come on for trial and the Court having filed its Opinion and Findings of Fact and Conclusions of Law on March 8, 1961, now therefore in accordance with the Opinion and Findings of Fact and Conclusions of Law,

IT IS ORDERED; ADJUDGED AND DECREED

1. This action is hereby dismissed with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc.

2. Defendant Pan American World Airways, Inc. shall divest itself of ownership of its stock in Pan American-Grace Airways, Inc. at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act.

3. Pending such time as Pan American World Airways, Inc. divests itself of its stock in Pan American-Grace Airways, Inc. pursuant to paragraph 2 of this judgment, it is enjoined from taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend its routes.

Dated: New York, N. Y.
May 8th, 1961

THOMAS F. MURPHY
United States District Judge

Judgment entered May 8, 1961

HERBERT A. CHARLSON
Clerk

UNITED STATES DEPARTMENT OF JUSTICE

April 20, 1961

Hon. Thomas F. Murphy
United States District Court
Southern District of New York
Foley Square
New York, New York

Re: United States v. Pan American World Airways, Inc., et al., Civil Action No. 90-254

My dear Judge Murphy:

We feel that it is not inappropriate for the Government to submit a proposed judgment for your consideration at the hearing in this case on April 24. Accordingly, we are enclosing a draft of a judgment which we feel carries out your holdings in the Opinion filed March 8 in every respect. We have discussed this proposed judgment with the CAB and are authorized to state that it meets the requirements of the Board in its present concern with the working out of flight patterns in the South American trade.

Sincerely yours,

Lee Loevinger
Assistant Attorney General
Antitrust Division

3. Sections 1, 2 and 3 of the Sherman Act, 15 U. S. C. §§1, 2 and 3.

Section 1. Trusts, etc., in restraint of trade illegal; . . . penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: . . . Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 2. Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section 3. Trusts in Territories or District of Columbia illegal; combination a misdemeanor

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

4. Sections 102d, 411 and 801 of the Federal Aviation Act, 49 U. S. C. §§1302d, 1381 and 1461.

Section 102d. Consideration of matters in public interest by Board

In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

* * * * *

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense.

Section 411. Methods of competition

The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

Section 801. The President of the United States

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

5. Section 414 of the Civil Aeronautics Act, 52 Stat. 1004.

Section 414. Legal Restraints

Any person affected by any order made under sections 408, 409, or 412 of this Act shall be, and is hereby, relieved from the operations of the "antitrust laws," as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

JURISDICTIONAL STATEMENT

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. ——

UNITED STATES OF AMERICA, APPELLANT

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., AND PAN AMERICAN-GRACE AIRWAYS, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court is reported at 193 F. Supp. 18. The opinion is reprinted in the appendix to the jurisdictional statement in No. 257, this Term, in which appellee Pan American World Airways, Inc., has appealed from another portion of the judgment in this case. Because of the length of the opinion, we are not reprinting it here; we shall refer to the appendix in No. 257 as "App."

JURISDICTION

The judgment of the district court was entered on May 8, 1961 (*infra*, p. 29), and the notice of appeal

was filed by the United States on July 7, 1961. The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C 29. *United States* v. *Columbia Steel Co.*, 334 U.S. 495; *United States* v. *Crescent Amusement Co.*, 323 U.S. 173.

QUESTIONS PRESENTED

1. Whether appellees unlawfully divided markets in air transportation, in violation of Sections 1 and 3 of the Sherman Act.

2. Whether, in the circumstances of this case, the ownership by appellee Grace of 50 percent of the stock of appellee Panagra, an air carrier which serves the same geographic area that Grace's steamship subsidiary serves, constitutes a combination in unreasonable restraint of trade.[1]

STATUTE INVOLVED

Sections 1 and 3 of the Sherman Act, 26 Stat. 209 as amended, 15 U.S.C. 1, 3, provide in pertinent part:

> SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy declared * * * to be illegal shall be deemed guilty of a misdemeanor, * * *.

[1] We are not pressing the issue, raised in our notice of appeal, whether Grace attempted to monopolize, conspired to monopolize, or monopolized, Latin American air transportation services.

SECTION 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, * * *.

STATEMENT

The government's complaint in this civil antitrust case, filed on January 11, 1954, charged that since 1928 appellees Pan American World Airways, Inc. ("Pan American"), W. R. Grace and Company ("Grace"), and their jointly-owned subsidiary, Pan American-Grace Airways, Inc. ("Panagra"), had engaged in a combination and conspiracy, and had been parties to contracts, to restrain and monopolize air transportation between the United States and South America, and had attempted to monopolize and had monopolized such transportation, in violation of Sections 1, 2, and 3 of the Sherman Act. The complaint alleged, among other things, that Pan American and Grace, when they organized Panagra, agreed that its operations would be confined to the west coast of South America and that Pan American would operate to the east coast of South America and between the United States and the Canal Zone; that, pursuant to

such an agreement, Panagra has refrained from seeking or obtaining operating rights on the east coast of South America; that Pan American used its 50 percent control of Panagra to prevent the latter from securing authority from the Civil Aeronautics Board to extend its route from the Canal Zone to the United States; and that Pan American and Grace had exercised their joint control of Panagra to "block and prevent" any action by Panagra that either of them viewed as "contrary or detrimental to its own particular interests."

After trial, the district court held that Pan American had monopolized and attempted to monopolize such transportation, but that the government had failed to prove its other charges. The court ordered Pan American to divest itself of its stock interest in Panagra,[2] and dismissed the complaint as to the other two defendants.

The underlying facts, as found by the district court and as supplemented by undisputed evidence, are as follows:

1. *Description of the Companies.* Pan American and Grace each owns 50 percent of the stock of Panagra. Panagra has been certificated by the Civil Aeronautics Board as an air carrier to engage in transportation betwen the Canal Zone and the west coast of South America to Santiago, Chile, and across the Andes to Buenos Aires and Montevideo. Panagra provides a through service to and from the United States by equipment interchanges with Pan Ameri-

[2] Pan American has appealed from that part of the judgment. No. 257, this Term, pending on jurisdictional statement.

can between the Canal Zone and Miami, and National Air Lines, between Miami and New York. In recent years, Panagra has carried from 79 percent to 86 percent of the airline passengers on United States flag carriers between this country and western South America, and from 50 percent to 75 percent of such passengers transported by all air carriers (including foreign carriers) (App. 4a, 37a, 50a).

Pan American, the largest United States international air carrier, carries passengers, freight and mail between the eastern United States and the Canal Zone and between the Canal Zone and the east coast of South America. The southern terminal of its route is Buenos Aires (App. 3a, 37a). Pan American and Panagra together presently carry from 75 percent to 88 percent of airline passengers on United States flag carriers between this country and South America, and about 50 percent of such airline passengers transported by all carriers. The other 50 percent of this traffic is divided among more than ten other airlines. Prior to 1948, when Braniff commenced certificated operations between Texas, the Canal Zone, and South America (see n. 7, pp. 10–11, *infra*), Pan American was the only United States air carrier operating between this country and the Canal Zone (App. 36a–38a, 40a, 43a).

Grace is engaged in various industrial and other enterprises in western South America. It wholly owns Grace Line, Inc., which operates a steamship service between that area and the United States. Grace Line is the only United States flag water-carrier providing regularly scheduled service between the

east coast of the United States and the west coast of South America.[3] In this service, Grace carries from 81 percent to 94 percent of all passenger traffic, about 60 percent of all northbound freight and about 50 percent of all southbound freight (App. 3a–4a; Exhs. GS–68–72, GS–87–96).

2. *The Organization of Panagra.* At the time Panagra was organized in 1929, Pan American was seeking to develop an air transportation service throughout South America. Its proposed service to eastern South America was based upon its contracts with the Post Office to carry air mail. Under these contracts, a subsidy was provided for service from Florida to Cuba, Puerto Rico, the Canal Zone and Trinidad. The Postmaster General had an option to extend such subsidized services along the northeast coast of South America to Dutch Guiana (App. 8a–10a).[4] Pan American was also negotiating for operating rights in the western South American countries (App. 11a–12a).

At the same time, Grace was investigating the possibilities of an airline on the west coast of South America. Grace believed that in a decade air service would become "a real competitor of our steamers," and that its early entry into the air transportation field

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[3] Such scheduled service is commonly described as "liner service" or "regular carriage," as distinguished from "irregular" or "tramp" service.

[4] Under the Foreign Mail Act of 1928, 45 Stat. 248, 1449, the Postmaster General awarded ten-year contracts for air mail service, with payment being made on the basis of mileage flown (not the amount of mail carried) (App. 9a).

would put it in a position "to meet any flying competition" (App. 12a; Exh. G-333).

In September 1928, Pan American and Grace agreed to "associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile". The plan was to form a corporation in which the two companies would subscribe in equal shares. Pan American was to "have charge of the operation of the service from the Canal to Valparaiso and [Grace's] houses on the West Coast of South America [were to] be the agents of the company on a reasonable compensation basis" (App. 13a–15a).

Panagra was organized by Pan American and Grace in January 1929. In March 1929, the Postmaster General awarded the new company a contract for air mail service from the Canal Zone down the west coast of South America to Santiago, Chile, which became Panagra's western terminus. In August 1929, Panagra's route was extended by the Postmaster General to Buenos Aires and Montevideo (App. 15a–17a). In September 1930, the Postmaster General awarded Pan American a route from Dutch Guiana to Santos, Brazil, with an option to extend to Buenos Aires. Pan America's service to Buenos Aires was commenced in 1931 (App. 21a).

Shortly after the organization of Panagra, it became evident that there would be a "bitter family quarrel" (App. 2a) between Pan American and Grace because "both interests [were] determined to have

a part in the management" of Panagra (Exh. G–43). During the early years, the disputes primarily concerned the pace and scope of development of the service within South America. Grace sought to exercise control through its South American offices, with the result that officials of Panagra and Pan American charged Grace with providing insufficient support for the new air service and with favoring its own steamship lines.[5] Beginning in the late 1930's, with the expansion of air travel, Grace sought to take over the active management of Panagra. Thereafter, the dispute focused largely on attempts by Grace to extend Panagra's operations north of the Canal Zone to the United States, a route on which Panagra would be in competition with Pan American. These attempts are described in Civil Aeronautics Board decisions.[6]

3. *Division of Territories in South America.* As the district court found, "There is no doubt that defendants came to agree upon a division of territories" (App. 31a) between Pan American and Panagra, under which Pan American would serve the north and east coasts of South America and Panagra would serve the west coast, and the trans-Andean route between Santiago and Buenos Aires. The complaint alleged, and Pan American asserted below, that such

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[5] *E.g.*, Exs. G–45, G–60, G–336, G–344, G–346, G–347, G–363–366, G–375–379, G–381, G–382, G–404, G–416, G–422, G–428, G–430, G–434, G–436–438, G–440, G–442–444, G–453, G–455, G–456, G–458, G–461–464, G–466, G–468, G–477, G–478, G–481, G–484, G–487, G–489.

[6] *Panagra Terminal Investigation*, 4 C.A.B. 670; *Additional Service to Latin America*, 6 C.A.B. 857, 912–916; *Pan American-Panagra Agreement*, 8 C.A.B. 50; *New York-Balboa Through Service Proceeding, Reopened*, 18 C.A.B. 501, 504–506.

an agreement was made at the time Panagra was formed and that it covered not only South American traffic, but also traffic between the United States and the Canal Zone, from which Panagra was to be excluded. Grace contended, on the other hand, that the territorial division was made only after Panagra had been formed, and that it was limited to South America (App. 6a, 31a–32a).

Both Pan American and Grace repeatedly recognized, and endeavored to enforce, the agreement for division of territories. In 1930, Pan American ordered a subsidiary to cease flights from Buenos Aires to Santiago on the ground that the "agreement" prohibited its operation on that route and "likewise restricts" Panagra from operating east of the Andes except on that route (App. 32a; Exh. G–67). In disputes about service in Colombia, Grace insisted in 1931 (and again in 1937) that Pan American stay out of the western part of the country, "definitely in Panagra's territory under our agreement" (App. 33a; Exhs. G–94, G–118, G–120), while Pan American, in 1946, relied upon the agreement to object to any service by Panagra to Bogota (Exh. G–148). Similarly, in 1929 and 1935, discussions between Pan American and Grace about proposed service by Pan American and Panagra to Bolivia were framed in terms of the territorial agreement (App. 33a; Exhs. G–65, G–97).

4. *Panagra's Flights to the United States.* Beginning in 1938, Grace attempted to extend Panagra's service to the United States. Pan American rejected Grace's proposal that Panagra seek to institute such

service. In 1939, Pan American and Grace reached an agreement under which Grace took over the management of Panagra, and Pan American promised to provide an adequate connecting service between Miami and the Canal Zone. Thereafter, to meet the possible threat of competition by another United States air carrier, Grace again pressed for Panagra to apply to extend its route to the United States. Pan American's representatives on the Panagra Board of Directors repeatedly blocked all attempts by Grace to have Panagra file an application for such authority with the Civil Aeronautics Board. Grace then commenced proceedings before the Board on behalf of Panagra to obtain such authority. In 1946, during the pendency of litigation which resulted from that attempt,[7] Pan American and Grace reached a settlement which the Board approved.[7] The settlement included

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[7] Grace filed with the Board a petition to extend Panagra's routes to the United States, and a complaint to require Pan American to terminate certain allegedly illegal conduct. It also intervened in a pending Board certification proceeding in which other carriers were seeking authority to operate between New Orleans and the Canal Zone. After an investigation, the Board concluded that it had no authority to extend Panagra's routes unless Panagra itself applied therefor, and dismissed the proceeding. *Panagra Terminal Investigation*, 4 C.A.B. 670. The Court of Appeals for the Second Circuit reversed, holding that, if Pan American's objection to Panagra's applying for a route extension was due to "illegality and fraud," the Board could entertain the application filed by Grace. *W. R. Grace & Co. v. Civil Aeronautics Board*, 154 F. 2d 271, 281–282. After this Court had granted certiorari to review that decision (328 U.S. 832), Grace and Pan American entered into the 1946 settlement described in the text. The writs were then dismissed as moot. 332 U.S. 827.

In the interim, in May 1946, the Board had certificated Braniff Airways to fly from Texas to the Canal Zone and

a Through Flight Agreement between Pan American and Panagra, under which the latter could fly directly to Miami, under the Pan American certificate. After further prolonged controversy between the parties, the Board in 1955 approved an interchange agreement among Panagra, Pan American and National Air Lines, under which Panagra has been able to provide through service on its planes to New York City[9] (App. 46a–51a).

5. *The decision of the district court.* After trial, the district court found that Pan American had monopolized and attempted to monopolize commerce, in violation of Section 2 of the Sherman Act. The court rejected the government's other charges.

The court found that there was no conspiracy between Pan American and Grace to restrain or monopolize trade (App. 24a–29a). The organization of Panagra by the two companies was, the court found, an economically sound and mutually advantageous joining of complementary resources in a "pioneering venture" to develop United States commercial aviation in western South America (App. 27a–28a). In the court's view, it was the parties' respective strong "bargaining position," not a conspiracy, which resulted in the agreement for joint control and participation. The agreement was intended to assure the best chance of success and also to protect the parents'

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points in Colombia, Ecuador, Peru, Bolivia, Paraguay, Brazil and Argentina. *Additional Service to Latin America*, 6 C.A.B. 857.

[9] C.A.B. Order No. E-9481, August 10, 1955.

"independent systems from * * * competition" by giving each a veto "against the possible treachery of the other to expand the operations of the company [Panagra] in competition with their respective independent lines" (App. 25a).

The court accepted Grace's position on the agreement for the division of territories. It held that the agreement was made after Panagra had been formed and after its route was extended to Buenos Aires in November 1929; and that it covered only the routes of Pan American and Panagra in South America, and not the Canal Zone-United States traffic (App. 32a, 34a). The court held that this agreement for division of territories was valid because it was "consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938" and with the government's policy in those "formative years" of air transportation, which was to subsidize one United States airline on each route (App. 30a–31a, 34a).

The court ruled that Pan American, by blocking the extension of Panagra's operating authority to the United States and thus excluding competition by Panagra, had monopolized and attempted to monopolize air traffic between the United States and South America and between the United States and the Canal Zone (App. 34a–52a).*

As to Grace, the court held that control or 50 percent ownership of an airline by a parallel steamship

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*The court rejected Pan American's arguments that the issues in this case should be referred to the primary jurisdiction of the Civil Aeronautics Board and that antitrust immunity was provided by prior Board approval of various agreements between the parties (App. 52a–56a).

company does not *per se* violate the Sherman Act (App. 57a–61a). It further held that no restraint on competition had been shown to have resulted from the relation between Grace and Panagra. The court was "not persuaded that the * * * market is the same," i.e., that air traffic was competitive with sea traffic to the west coast of South America. The court ruled that the principal business of Panagra is the transportation of passengers, that of Grace the carriage of freight; and that it had not been shown that passengers or shippers of one of these carriers were potential customers of the other (App. 61a–65a). Finally, it ruled that, in any event, the government had to show that Grace had restrained or monopolized commerce. There was, the court believed, no such showing; on the contrary, Grace was the partner which had "fostered and fought for Panagra development and expansion" (App. 28a, 65a).

The court's judgment, entered on May 8, 1961, (1) dismissed the action with respect to Grace and Panagra; (2) directed Pan American to divest itself of its stock in Panagra pursuant to a plan of divestment to be approved by the Civil Aeronautics Board and the court; and (3) pending the divestiture, enjoined Pan American from interfering with the filing or processing of applications by Panagra to modify or extend its routes (App. 71a–72a).[10]

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[10] Thereafter, Pan American moved to suspend the injunction in paragraph 3 of the judgment, pending appeal to this Court. On June 13, 1961, the district court granted the motion unless Grace agreed to stipulate that, in the event of a reversal by this Court, its nominees would vote to withdraw any Panagra application filed with the Board during the interval. Grace filed such a stipulation on June 22, 1961.

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THE QUESTIONS ARE SUBSTANTIAL

This is a major antitrust case which significantly affects air service rendered by United States carriers between this country and South America. For many years, the development of such service has been handicapped by the fact that Panagra, the principal American flag carrier operating between the Canal Zone and western South America, was equally owned by Pan American and Grace, which are, respectively, Panagra's principal air and water competitors. The record shows that, as a result of the joint ownership and control of Panagra by Pan American and Grace and the agreement between the two latter companies which, in order to avoid competition, divided the operating areas of Pan American and Panagra, the economic development of Panagra was seriously hampered. As the district court noted (App. 2a), this suit was brought by the United States at the request of the Civil Aeronautics Board, because of the latter's inability to solve the air transportation problems created by the joint ownership and control of Panagra.

The principal relief sought was the divestment by both Pan American and Grace of their stock interests in Panagra. The district court found that Pan American had monopolized and attempted to monopolize air transportation between the United States, the Canal Zone and South America, and directed Pan American to dispose of its interest in Panagra. The court held, however, that the other co-owner of Panagra, appellee Grace, had not violated the Sher-

man Act, either through its participation in an agreement to divide the South American air transportation market, or by its 50 percent stock interest in Panagra. The effect of this ruling is to permit Grace to continue its control of Panagra—a control that permits Grace to block any action by Panagra that Grace considers to be contrary to its own economic interest. As we show below, the economic interests of Grace and Panagra have frequently clashed in the past, and are likely to do so in the future.

Grace is the dominant regular water carrier between the eastern United States and western South America, and Panagra (as a result of its through-flight agreement with Pan American and National Airlines) is the dominant air carrier between those same areas. The district court erred in holding that the agreement between Grace and Pan American for the division of territories between the latter and Panagra did not violate the Sherman Act. Moreover, contrary to the conclusion of the district court, the record establishes that there is significant competition between Grace and Panagra over these routes and that Grace has not hesitated to restrict Panagra's competitive efforts when they clashed with its own economic interests as a water carrier. In these circumstances, we believe that Grace's 50 percent ownership of Panagra itself constitutes a combination with Panagra in unreasonable restraint of trade and that this combination, like the illegal monopolization by Pan American, should be terminated by an order directing Grace to divest its stock interest in Panagra.

"Divestiture or dissolution has traditionally been the remedy for Sherman Act violations whose heart is intercorporate combination and control" (*United States* v. *du Pont & Co.*, 366 U.S. 316, 329).

1. The district court had "no doubt" that, in 1929, Pan American and Grace "agreed upon a division of territories" in South American air service, under which the west coast of South America and Santiago-Buenos Aires were allocated to Panagra, and eastern and northern South America to Pan American. There is equally no doubt that agreements to divide territories between actual or potential competitors are *per se* unreasonable restraints of trade in violation of Sections 1 and 3 of the Sherman Act. *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 5; *Addyston Pipe and Steel Co.* v. *United States*, 175 U.S. 211, affirming 85 Fed. 271 (C.A. 6). Moreover, agreements to divide markets cannot be saved from illegality by a claim that they aid rather than injure the public or that they actually are in conformity with government policy. *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 220–222; *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U.S. 457, 467–468; *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, 458–461. The district court erred in concluding that the 1929 agreement between Pan American and Grace to divide markets in South America was nevertheless legal because it "seems perfectly consistent with the air transportation policy of this country in those formative years" (App. 31a).

Nor can the agreement for division of markets be justified as part of a "pioneering venture" (App. 28a) by Pan American and Grace for the organization and development of Panagra. *First*, such an agreement to divide markets, illegal under the Sherman Act, cannot be justified under common law principles as merely ancillary and necessary to a joint venture. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. at 280–283; *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593; *United States* v. *Paramount Pictures*, 334 U.S. 131, 150, 153. As this Court stated in *Timken*, rejecting the contention that a world-wide division of markets was merely "ancillary" to a legal joint venture, "every agreement and combination to restrain trade" could be labeled a "joint venture" (p. 598). *Second*, the district court found that the agreement for division of territories was made more than one year after the agreement for the organization of Panagra, and about ten months after the formation of that company. Such a subsequent agreement for division of markets would not come within the common-law doctrine, which covers only ancillary restraints imposed at the time that a joint venture is undertaken. See *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. at 282–284, 288–291. *Third*, even if the agreement to divide markets was made at the time of the original agreement between Pan American and Grace for the organization of Panagra (as the complaint alleges, and as Pan American contends, Juris. St. No. 257, p. 5), rather than a year later, the division of territories would still be invalid under

common-law principles. For at common-law an ancillary restraint is valid only if it is reasonably limited both in time and extent.[11] This agreement not to compete, however, was unlimited in duration, and exceeded anything reasonably necessary for the protection of the respective interests of Pan American and Grace in connection with the formation of Panagra. *Fourth*, even assuming *arguendo* that the agreement not to compete was valid when entered into in 1928 or 1929, any reasonable period necessary to protect Pan American and Grace had long expired when, more than 30 years later, the district court decided this case. Indeed, it would seem that such an agreement ceased to be valid no later than 1938, when the Civil Aeronautics Act subjected both Pan American and Panagra to a detailed regulatory scheme under which their entry into new markets required prior government authorization. Cf. *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 12.[12]

2. As the trial court found (App. 37a), "Panagra is the dominant United States flag air line participating (almost entirely with Pan American) in the movement of passengers between the United States and points in western South America * * *. During

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[11] *Shawnee Compress Co.* v. *Anderson*, 209 U.S. 423; *Oregon Steam Navigation Co.* v. *Winsor*, 20 Wall. 64.

[12] If this Court agrees that the agreement for division of markets is unlawful, the district court on remand might conclude that, in view of the close interrelationship between that agreement and the joint ownership and control of Panagra by Pan American and Grace, effective relief against the agreement would require not only cancellation and an injunction against its performance, but also divestiture of Grace's interest in Panagra.

the 1950–1957 period, Panagra carried between 79% and 86% of this traffic and from 84% to 93% of the eastern United States, western South America traffic." The record shows that Grace, through its wholly-owned steamship subsidiary, is the only United States flag water carrier operating a scheduled service between the east coast of the United States and the west coast of South America; in this service, it carries from 81 percent to 94 percent of all passenger traffic, about 60 percent of all north-bound freight traffic and 50 percent of all south-bound freight traffic (see the Statement, *supra*, pp. 5–6). The district court found (App. 63a) that on this route Grace "provides regular liner service between substantially the same areas served by Panagra although it is not co-extensive." It held (*ibid.*), however, that Panagra and Grace "cater primarily to two different interests—Panagra sells passenger transportation predominantly whereas Grace Line's principal service is the carriage of freight"; and that the air and ship transportation, both of passengers and of cargo, provided by these two carriers are not "reasonably interchangeable and do not make up a single market" (App. 64a).

In so holding, the district court applied an erroneous standard for determining whether the corporate interlock between Grace and Panagra constitutes a combination in unreasonable restraint of trade that violates Sections 1 and 3 of the Sherman Act. The test is not whether air and sea transportation between the same areas are "reasonably interchangeable" to all travelers and shippers for all purposes. It is enough that there is a substantial area of competition be-

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

v.

UNITED STATES OF AMERICA,
Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT PAN AMERICAN WORLD AIRWAYS, INC.

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tween the two forms of transportation. The test is whether, in all the circumstances, the ownership and control of an air carrier by a water carrier, where both serve the same markets, does, or is likely to, unreasonably restrain the trade of one carrier in favor of the other.

In *United States* v. *Columbia Steel Co.*, 334 U.S. 495, the question was the validity, under Sections 1 and 2 of the Sherman Act, of the proposed acquisition by United States Steel of the assets of an independent steel fabricator on the west coast. The government charged that the contract for the purchase of such assets was in unreasonable restraint of trade, and that it indicated an intent by United States Steel to attempt to monopolize the market in fabricated steel products (pp. 498–499). This Court, in holding that the acquisition did not violate Section 1 of the Sherman Act, stated (p. 527) that the touchstone for determining the legality of "the acquisition of competitors in identical or similar lines of merchandise" is whether "such acquisition results in or is aimed at unreasonable restraint * * *. In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market." The Court "agree[d], too, with the government's position that potential competition from producers of presently

non-competitive articles as well as the possibility that acquired facilities may be used in the future for the production of new articles in competition with others may be taken into consideration in weighing the effect of any acquisition of assets on restraint of trade" (p. 528).

A similar standard should govern the legality of the combination of an air carrier and a water carrier that serve the same areas. In both situations, the question is whether the joint ownership and control of firms serving the same market "results in or is aimed at unreasonable restraint" of actual or "potential competition" (*Columbia Steel, supra*). In determining that question, it is immaterial that in one case the restraint results from an acquisition, whereas in the other case the restraint results from existing ownership and control. For the central inquiry in both cases is the effect of the combination upon competition.

We submit that, under the standards enunciated in *Columbia Steel,* Grace's 50 percent stock interest in Panagra violates Sections 1 and 3 of the Sherman Act. For such stock interest is a combination by which Grace is able to restrain, and in the past has significantly restrained, the competition of Panagra—an air carrier serving the same market as Grace that is in actual and potential competition with it for the transportation of passengers and property between the eastern United States and western South America.

a. The record shows that in recent years Panagra has carried about 1,100 persons per month and Grace

Latin America, 6 C.A.B. 857, the Board, in denying applications by Grace and two other steamship owners for authority to operate air service between New York and Puerto Rico, stated (pp. 903-904): "It would be expecting too much to assume that a transportation company engaged in both air and sea transportation would be in a position to provide vigorous competition between its air transportation and its surface transportation on this route." The resulting "inherent conflict of investment interests," which is one of "the realities of business experience," would dampen the vigorous competitive development of the airline. In other regulatory legislation, Congress has similarly recognized the dangers to the economic health of our national transportation system if one mode of transportation is favored at the expense of a competing mode. See the National Transportation Policy of the Interstate Commerce Act, 49 U.S.C. preceding Section 1; *Interstate Commerce Commission* v. *Mechling,* 330 U.S. 567; *Schaffer Transportation Co.* v. *United States,* 355 U.S. 83.

The history of Grace's relationship with Panagra shows that Grace has not hesitated to restrict Panagra's business when it posed a competitive threat to Grace. Thus, in the 1930's Grace insisted that Panagra observe rate differentials that favored water over air transportation,[15] and told a Panagra official to "abstain from soliciting effective or potential Grace Line cargo."[16] During that period, Panagra successfully solicited shipments of gold from Ecuador

[15] Exs. G-337-339, G-342, G-343, G-373, G-482.

[16] Ex. G-382.

to the United States by offering lower rates than the water carriers. Grace eliminated this competition by reducing its own rates and ordering Panagra officials to cease offering discounts.[17] The record shows numerous other instances in which the Grace management and its employees favored Grace over Panagra where the economic interests of the two carriers conflicted.[18]

As long as Grace retains its 50 percent stock interest in Panagra—an interest which, as soon as Pan American is divested of its holdings of Panagra stock, will give Grace unquestioned control of Panagra—Grace will always be able to block Panagra from doing anything that poses a competitive threat to Grace. The air freight business is still in the developmental stage, and further substantial expansion of that business, as well as of passenger traffic, between the United States and South America may reasonably be expected. Both the current competitive situation in the air transportation business between the United States and South America, and "the probable development of the industry" (*United States* v. *Columbia Steel Co., supra,* 334 U.S. at 527), indicate that Grace's ownership of 50 percent of the stock of Panagra constitutes a combination in unreasonable restraint of trade in violation of Sections 1 and 3 of the Sherman Act.

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[17] Ex. 1121, pp. 9–12, G–354–357, G–359–361, G–363. Grace's support for expansion of Panagra developed only after it recognized (in the late 1930's) that its steamship carriage of passengers was inevitably declining in favor of the rising air service. See, *e.g.*, Ex. G–377, G–381, G–449, G–451, G–461.

[18] See exhibits cited n. 5, supra, and Exs. G–33, G–340, G–341, G–345, G–353, G–377, G–424, G–426.

CONCLUSION

The questions presented by this appeal are substantial and of public importance. Probable jurisdiction should be noted.

Respectfully submitted.

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Solicitor General.
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DECEMBER 1961.

APPENDIX

FINAL JUDGMENT

This case having come on for trial and the Court having filed its Opinion and Findings of Fact and Conclusions of Law on March 8, 1961, now therefore in accordance with the Opinion and Findings of Fact and Conclusions of Law,

IT IS ORDERED, ADJUDGED AND DECREED

1. This action is hereby dismissed with respect to defendants W. R. Grace and Company and Pan American-Grace Airways, Inc.

2. Defendant Pan American World Airways, Inc. shall divest itself of ownership of its stock in Pan American-Grace Airways, Inc. at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act.

3. Pending such time as Pan American World Airways, Inc. divests itself of its stock in Pan American-Grace Airways, Inc. pursuant to paragraph 2 of this judgment, it is enjoined from taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend its routes.

Dated: New York, N.Y., May 8th, 1961.

THOMAS F. MURPHY,
United States District Judge.

Judgment entered May 8, 1961.

HERBERT A. CHARLSON,
Clerk.

U.S. GOVERNMENT PRINTING OFFICE: 1961

about 315 persons per month between those areas.[13] Correspondence in the record shows that, in 1951, passenger traffic to those areas was being actively sought by both Panagra and Grace, each of which succeeded in diverting passengers from the other (Exs. G–387–388, 391). A Pan American official testified at the trial (Tr. 516–517) that his company tries to persuade passengers traveling to South America that an air trip is more pleasant than a sea trip, and he stated that Pan American and the steamship lines are "very definitely" in competition for passengers traveling to Buenos Aires and Rio de Janeiro, since "we are both trying to get the same market."

While it is undoubtedly true, as the district court suggested (App. 62a), that businessmen on a quick trip to South America may not be potential steamship passengers, the record shows that more than one half of all air line passenger traffic between the United States and South America is non-business traffic (Tr. 591, 620). Grace and Panagra are plainly in competition for such traffic. Cf. *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289 (C.A. D.C.), certiorari denied, 347 U.S. 916. In the cited case the court upheld an order of the Civil Aeronautics Board, under Section 409(a)(1) of the Civil Aeronautics

[13] Exs. GS–79–81. The district court stated (App. 63a) that Panagra carried 25 times as many passengers to South America as Grace did. Most of the Panagra passengers involved in that comparison, however, were to Buenos Aires and Montevideo, which are not served by Grace. On the basis of the figures given in the text, which are limited to the areas actually served by both carriers, Panagra carried only about three and a half times times as many passengers as Grace.

Act, which disapproved, as adversely affecting the public interest, an interlocking relationship between an air carrier (Pan American) and a water carrier (United Fruit Company). The court pointed out (p. 291) that the Board had found that Pan American and United Fruit "are in competition to a substantial degree"; but that such competition "does not * * * extend to the full operations of either company. It is limited to the passenger tourist traffic going into the Caribbean area from the United States." The court rejected the argument "that the difference between a leisurely sea voyage via United Fruit and a fast air trip via Pan American eliminates the element of competition." It stated (pp. 291–292):

> * * * The general area traversed, however, is largely the same; and each carrier offers its own type of service in the effort to obtain the custom. Competition exists between types of vacationing in, and in traveling to and fro, the same area, and therefore between the carriers which seek the traffic. The prospective travelers cannot be isolated into two groups, the members of each of which must be assumed to have determined the kind of transportation they will use, or the kind of vacation they will choose, without considering an available alternative.

The court further stated (p. 292) that although the tourist traffic was only a small percentage of the water carrier's total business, the amount was "consequential", and that it was not "merely incidental" to the water carrier's other operations, but was "an integral part of the whole."

The reasoning of the *Lehman* case is fully applicable to the present case. Here, as in *Lehman*, the "general area traversed * * * is largely the same; and each carrier offers its own type of service in the effort to obtain the custom." The passenger business of Grace is "consequential" and an "integral part" of its operations. Both Grace and Panagra carry a substantial volume of passenger traffic between the eastern United States and western South America, and they plainly are competitors for such traffic.

b. There is also actual and potential competition between Panagra and Grace with respect to cargo traffic. Carriage of freight and express by air has expanded rapidly in recent years, and witnesses in the air cargo business testified that there is active competition between air and water transportation for the carriage of many commodities (*e.g.*, Tr. 78–81, 108, 135). Contrary to the statement of the district court (App. 64a), air shipment is not limited to items for which the cost of transportation is relatively insignificant. Even where transportation expense is a major cost element, air transportation may still be competitive with surface transportation because it avoids multiple handling, overland transportation between interior points and seaports, expensive packaging and warehousing (Tr. 82–91, 109–113, 135–139, 180–181).[14]

[14] Some of the examples of recent transactions in this type of cargo, given by witnesses in the air cargo business, were the transportation of refrigerators and freezers from Indiana to Barbados and refrigerators and washing machines from Miami to Venezuela (Pan American, Tr. 88–89, 97); sinks and cabinets from Ohio to Guatemala (Aerovias Sud America, Tr.

It is true that the total cargo carried by Panagra between the United States and South America is only about one tenth that carried by Pan American. But the total carried by Panagra—4,461,000 ton miles of freight and express in 1957 (Ex. GS–84)—hardly deserves the "miniscule" character assigned it by the district court (App. 64a). Moreover, the record suggests that the weaker position of Panagra vis-a-vis Pan American in the South American air cargo market may well be the result of restraints to which Panagra has been subjected in the past. Pan American's cargo sales manager for the United States testified that Panagra had not made its best efforts to generate carriage of air freight (Tr. 93).

c. The adverse consequences upon the competitive development of an air line that is subject to the control of a water carrier serving the same market have been pointed out by the Civil Aeronautics Board, the expert agency charged by Congress with, among other things, insuring "[c]ompetition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense" (Section 2(d) of the Civil Aeronautics Act of 1938 and Section 102(d) of the Federal Aviation Act of 1958, 49 U.S.C. 1302(d)). In *Additional Service to*

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111); fire bricks from St. Louis to Venezuela, and Bermuda onions from Chile to New York (Riddle Airlines, Tr. 135–136, 168–169). The last shipment, 500 tons of onions a year, had previously been carried by water carriers on the Grace route (Tr. 168–169).

BRIEF FOR THE APPELLANT

IN THE

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No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
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v.

UNITED STATES OF AMERICA,
Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT PAN AMERICAN WORLD AIRWAYS, INC.

(Filed August 31, 1962)

Opinion Below

The opinion of the United States District Court for the Southern District of New York, including findings of fact and conclusions of law, is reported at 193 F. Supp. 18 (R. 5365-5434).

Jurisdiction

This antitrust suit was brought under Sections 1, 2 and 3 of the Sherman Act, 26 Stat. 209, 15 U. S. C. Sections 1, 2, 3. Final judgment was entered by the dis-

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Board as part of the Pan American system, should become a third American carrier into South America.

The district court found that the charge of the complaint was not sustained, that there was no combination or conspiracy of any kind, that the formation of Panagra by Pan American and Grace as a joint venture and their joint ownership of Panagra and agreement that Pan American and Panagra would not parallel each other's routes were lawful, but that the exercise of Pan American's half ownership of Panagra to prevent Panagra from making an application to the CAB for a route between the United States and the Canal Zone, which would parallel Pan American's route, was an exclusion of Panagra from the market, and a unilateral violation of the antitrust laws through monopolization and attempted monopolization on the part of Pan American. The judgment of the district court dismissed the action against Grace and Panagra and decreed a divestment of Pan American alone, with the consequence that Panagra would become a third American carrier into South America.

The questions on this appeal, other than the initial question of whether the order from which the appeal is taken is "final" for the purposes of appellate jurisdiction, are:

(1) Whether, in the light of the finding of the district court that Pan American's stock ownership in Panagra was legal and the agreement that Pan American and Panagra were not to parallel each other's routes was legal, there was any antitrust violation by Pan American in its refusal to allow an application to be made for a Panagra route from the United States to the Canal.

(2) Whether the agreement not to parallel each other's routes did not include the Canal Zone-United States route as well as the routes from the United States down the east coast of South America and from the Canal down the west coast of South America.

(3) Whether it was not lawful, regardless of any agreement on the allocation of territories, for Pan American to exercise its lawful 50% interest in Panagra to prevent an expansion of the joint venture beyond its defined purpose and into a paralleling of Pan American's route which would destroy that route.

(4) Whether Pan American monopolized or attempted to monopolize air transportation between the United States and South America, a question which involves the following subsidiary questions:

(a) Did Pan American "exclude" Panagra from the market.

(b) Is Pan American "dominant" in the market and is Panagra a "competitor" of Pan American, and if so and Panagra was excluded from the market by Pan American, was such an exclusion of a single competitor monopolization, when entry into the market and the fixing of rates are controlled by the CAB.

(5) Whether the CAB did not have primary jurisdiction of the subject matter of the action so that the district court should not have entertained the action.

(6) Whether the CAB's approval of the through-flight arrangements did not confer antitrust immunity on Pan American as to the antitrust violation found by the district court.

(7) Whether, even if the decision of the district court were sustainable on the merits, the decree of divestiture is not unnecessary, unwarranted and unjustified.

Statement of the Case

The Government brought this action in 1954, charging Pan American and Grace, in their joint ownership and operation of Panagra, with a combination in restraint

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trict court on May 8, 1961. Notice of appeal was filed in the district court on May 12, 1961.

Jurisdiction is conferred upon this Court by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U. S. C. Section 29. On January 15, 1962, this Court set down this case, and its companion, No. 47, October term 1962, for argument and postponed further consideration of the question of jurisdiction to the hearing of the case on the merits. 368 U. S. 964 (R. 5449).

Statutes Involved

The statutes involved are Sections 1, 2 and 3 of the Sherman Act, and Sections 401, 408, 411, 412, 414, 415 and 801 of the Civil Aeronautics Act. The sections of the Civil Aeronautics Act have been substantially reenacted as sections of the Federal Aviation Act. These statutes are set forth in the Appendix (pp. 88-94 below).

Questions Presented

The charge of the complaint in this antitrust action brought by the Government against Pan American World Airways, Inc. (Pan American), W. R. Grace & Co. (Grace) and Pan American-Grace Airways, Inc. (Panagra) is that the formation of Panagra by Pan American and Grace as equal owners in 1928, their joint ownership of Panagra then and since and their agreement that Pan American and Panagra would not parallel each other's routes, was a combination and conspiracy in restraint of trade and monopolization and attempted monopolization of air transportation between the United States and South America.

The Pan American-Panagra route pattern, which has existed since the formation of Panagra as a joint venture to operate an airline from the Canal Zone down the west

coast of South America, has been that Pan American has operated from the United States down the east coast of South America and from the United States to the Canal Zone, where it has connected with Panagra, which has operated from the Canal Zone down the west coast of South America, to form a connecting and complementary service between the United States and west coast of South America. A controversy arose and continued for some years between Grace and Pan American over a proposal by Grace that Panagra apply to the Civil Aeronautics Board (CAB) for a route of its own between the United States and the Canal Zone, and a proposal by Pan American that through-flight arrangements be made by which a single plane of Panagra's or Pan American's might make a through-flight over both routes between the United States and South America. An evenly divided board of directors of Panagra failed to agree upon either proposal until the year 1947, when, with the approval of the CAB, a through-flight arrangement was effected in settlement of the controversy, under which Panagra planes make through-flights over the combined Pan American and Panagra routes.

The relief requested by the Government was a decree of divestiture of both Pan American and Grace from their ownership of Panagra, with the ultimate objective that Panagra, freed from the control of either Pan American or Grace, would be merged into the air transportation system of a second American air carrier into South America and would not itself become a third American carrier into South America. The CAB, which had requested the Attorney General to bring the action, had declared that it would be contrary to national policy in air transportation and a waste of public funds and private investment if Panagra, which had been considered by the

coast of South America to Pan American and of the west coast of South America to Panagra. Pan American also acknowledged that the agreement covered the route from the United States to the Canal Zone, which was Pan American's originally established route and the basis of the formation of Panagra and creation of its connecting service to operate from the Canal Zone down the west coast of South America. Grace contended, however, that the territorial division did not include the route from the United States to the Canal Zone and that there was no understanding one way or the other with respect to a possible paralleling of that route by Panagra (Opinion, R. 5395-396).

For ten years no question was raised about Panagra's undertaking to establish a service of its own from the Canal Zone to the United States. Beginning in 1938, however, Grace's nominees on the Panagra board of directors started urging the filing of an application by Panagra with the CAB for an extension of Panagra's route from the Canal Zone to the United States, seeking thereby to parallel (and we will show replace) the Pan American route between the United States and the Canal Zone (Opinion, R. 5405). Pan American took the position that Panagra had been formed to operate on the west coast of South America from the Canal Zone down in connection with the Pan American route from the United States to the Canal Zone, and its representatives on the Panagra board of directors consequently refused to sanction the making of an application by Panagra to parallel the Pan American route. There was compelling reason against the establishment of an independent route for Panagra between the United States and the Canal in the fact (continuing to be the fact) that the available traffic and traffic potential would not support parallel routes of Pan American and Panagra between the United

States and the Canal (R. 184-195). Grace continued its agitation for a paralleling route, however, and for the purpose began to complain of the connecting service supplied by Pan American at the Canal Zone. Grace also began to agitate, contrary to the agreement between the parties that Panagra's operations should be in Pan American charge (Opinion, R. 5377, n. 7), for the election of a Grace representative as president and manager of Panagra (P. Ex. G-182, R. 710). Pan American, seeking to satisfy Grace and remove any source of friction with Grace and within their joint company, agreed in 1939 that a Grace representative should become president of Panagra and be placed in charge of its management, and agreed to maintain an adequate connecting service with Panagra at the Canal Zone (which Pan American maintained it had always done) and that if such connecting service was found not to be adequate, as determined by arbitrators, Panagra would be allowed to apply to the CAB to operate on its own route to the United States (P. Ex. G-190, R. 729).

Two years later, Grace, having acquired control of the management of the joint company, resumed its agitation to have Panagra apply for a route to the United States without making complaint about the connecting service or attempting to arbitrate any question of the adequacy of the connecting service. Pan American declined to accede to the Grace request on the ground that such an application would be contrary not only to the original agreement between Pan American and Grace under which Panagra was formed, but would be contrary to the 1939 agreement under which Grace came into control of the management of Panagra and it was agreed that any application for a Panagra route to the United States should depend on the failure of Pan American to supply an adequate connecting service at the Canal Zone (P. Ex.

Canal was a unilateral suppression of Panagra competition on the part of Pan American and constituted monopolization and attempted monopolization of air transportation between the United States and the Canal and South America (Opinion, R. 5403, 5415), and therefore that Pan American alone should be divested of its stock ownership in Panagra (R. 5372, 5433-434, 5435).

The consequence is (1) a finding of non-conspiratorial, unilateral monopoly, not alleged in the complaint, and (2) a decree which defeats national policy in air transportation as declared by the CAB and renders its attainment impossible by making Panagra under Grace control a third American flag carrier in Latin America.

On this appeal Pan American contends that the decision of the district court is untenable both on the facts and the law, and that the court's holding against Pan American is inconsistent with and contrary to the basic findings of the decision, and that on the basis of the decision alone the conclusion and judgment are clearly erroneous and must be reversed. It is further Pan American's position that entertaining the action by the district court has been an unwarranted exercise of jurisdiction over a subject matter which is within the primary jurisdiction of the CAB, an error on the part of the district court which is exemplified in a decree which so infringes upon and interferes with the jurisdiction of the CAB as to disable the Board from carrying out its responsibility of developing a Latin American route pattern in accordance with declared national policy. Finally, Pan American contends that the approval by the CAB of the through-flight agreements as a settlement of the problem of Panagra's access to the United States, and the Board's finding that no monopoly resulted therefrom, accorded Pan American immunity from any antitrust charge based on its refusal to approve the filing of an application for a Panagra

route to the United States, and constituted an adjudication that Pan American's actions in this respect were not monopolization. As the district court's decision against Pan American rests entirely on its finding that Pan American's votes within Panagra on the question of Panagra's extension to the United States created a monopoly, the decision cannot stand against the contrary finding of the CAB.

SUMMARY OF ARGUMENT

I.

This Court has jurisdiction to hear the appeal. All of the criteria of "finality" stated by this Court in *Brown Shoe Co. v. United States*, 370 U. S. 294 (1962), are satisfied in this case.

II.

The basic findings by the district court of (a) legality in the formation and joint ownership of Panagra by Pan American and Grace and (b) legality in the agreement that Pan American and Grace were not to parallel each other's routes, required a dismissal of the action against Pan American. Although the district court's more detailed finding of the agreement not to parallel routes was that it applied only to Pan American's route on the east side of South America and Panagra's route on the west side of South America and did not include Pan American's route from the United States to the Canal, it is abundantly clear that the territorial division included Pan American's route north of the Canal. Regardless of the nature and scope of the agreement, however, Pan American, as a half owner in the Panagra joint venture, was entitled, when the question arose of a proposed extension of the venture beyond its defined purpose, to vote against the extension.

Panagra was formed only for the purpose of operating an airline from the Canal down the west coast of South America; the route was designed to connect with the previously established route of Pan American between the United States and the Canal, and the two routes were to provide a connecting and complementary service between the United States and the west coast of South America. When Grace made the proposal many years later that Panagra should establish its own independent route between the United States and the Canal, Pan American was fully justified in not acceding to the suggestion of an expansion and change in the character of the joint venture, one which, if adopted, would have resulted in the replacement of Pan American by Panagra on the route between the United States and the Canal and the destruction of the Pan American route, unless Pan American should similarly apply for and obtain a route from the Canal down the west coast of South America paralleling the Panagra route. Competition between Pan American and Panagra could be established only by such paralleling of routes both above and below the Canal. The available traffic would not support two parallel services and such a paralleling would have inflicted heavy losses on both Pan American and Panagra, resulting in a waste of private investment or a waste of public funds in subsidy to make up for the losses. Pan American was thus both legally and reasonably justified in refusing to approve the Grace proposal and in offering and urging a through-flight service, which was finally established in 1947, with the approval of the CAB, under which for the past fifteen years Panagra planes have flown over Pan American routes in a through service between the United States and the west coast of South America. Through service

has been a sound arrangement which has achieved all the public convenience which an independent route for Panagra could have achieved, and it has saved Panagra, Pan American and the public purse from large financial losses.

III.

There is no support for the conclusion of the district court that Pan American has monopolized and attempted to monopolize air transportation between the United States and South America or for the conclusion that Pan American's vote in the Panagra board of directors on the question of Panagra's extension to the United States was an act of monopolization.

The district court has held that Pan American was "dominant" in the market of air transportation between the United States and South America, that it "excluded" Panagra from the market and that such exclusion was a monopolization of air transportation between the United States and South America. The district court was in clear error in holding that Pan American has "excluded" Panagra from the market. On the contrary, Pan American worked out the through-flight arrangements which put Panagra planes on the combined routes of Pan American and Panagra. Pan American did not even have the power to exclude Panagra from the market. It was the assumption of the district court that Pan American had that power by reason of its half ownership of Panagra and power to preclude affirmative action by Panagra's equally divided board of directors in favor of making an application for a Panagra route to the United States. In making this assumption, the district court has disregarded the fact which destroys the assumption, that as long ago as 1946 the United States Court of Appeals for the Second

of trade and monopoly in air transportation between the United States and South America (R. 7-11). The relief requested was that both Pan American and Grace be divested of their ownership of Panagra (R. 11-12).

Pan American was organized in 1927, with the formulation of plans to establish a comprehensive system of air transportation between the United States and all parts of Latin America (Opinion, R. 5367). Service was established that year between Key West and Havana (Opinion, R. 5373-374), followed in 1928 with the establishment of service between Miami and the Canal Zone (D. Ex. P-95, R. 2514).* These routes were the basis of planned extensions of service down the east and west coasts of South America (Opinion, R. 5373-374).

Learning of Pan American's plan and being interested itself in the establishment of air service down the west coast of South America, where it operated a steamship line and conducted varied business activities, Grace entered into negotiations with Pan American looking to the formation of a jointly owned airline to bid on a mail contract and operate from the Canal Zone down the west coast of South America (P. Ex. G-2, R. 336; G-81, R.

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* Pan American exhibits P-2 through P-427, R. 1859-4268, were introduced into evidence at page 359 of the original transcript, a portion of the transcript which was omitted from the printed record. Citations hereafter made to P-2 through P-427 will omit any reference to the point at which they were introduced. Defendants' exhibits will be referred to as "D. Ex." and plaintiff's as "P. Ex." In addition, exhibits were introduced in the court below with letter prefixes to distinguish the defendants and various types of exhibits. For purposes of clarity we will continue to refer to the exhibits in the same manner here, as follows: Pan American exhibits: "P"; Pan American statistical exhibits: "PS"; government exhibits: "G"; government statistical exhibits: "GS"; and Grace exhibits: "WRG". Thus a typical Pan American exhibit will be referred to as "D. Ex. P-2, R. 1859".

531).* This line would be a connecting service with Pan American's line from Miami to the Canal Zone, and the combined lines would provide a service from the United States down the west coast of South America (P. Ex. G-13, R. 349; D. Ex. P-99, R. 2531). An agreement between the parties to this end was reached in September, 1928, and Panagra was formed, with Pan American and Grace as equal owners, to supply the service from the Canal south (P. Ex. G-15, R. 354; G-18, R. 359). Pan American was to have charge of the operation of Panagra, and the Grace houses in South America were to be the agents of the company. Service by Panagra down the west coast of South America and across the Andes to Buenos Aires was established in 1929, and the following year, as was intended, Pan American instituted service down the east coast of South America to Buenos Aires.

In connection with the formation of Panagra, Pan American and Grace reached an agreement as to a division of territories between Pan American and Panagra. The complaint alleges (R. 8-9) and it is the Government's claim that the agreement covered the respective fields of operations of the two carriers: (1) Pan American was to operate from the United States down the east coast of South America free from competition by Panagra, (2) Pan American was to operate from the United States to the Canal Zone free from Panagra competition, (3) Panagra was to operate from the Canal Zone down the west coast of South America free from competition by Pan American.

The agreement was acknowledged by both Pan American and Grace as to a territorial division of the east

*Government exhibits G-1 to G-1124, R. 335-1358, 1455-1850, and GS-1 to GS-100, R. 1359-1454 were introduced at pages 11-12 of the original transcript. Citations hereafter made to G-1 through G-1124 and GS-1 through GS-100 will omit any reference to the point at which they were introduced.

G-192, R. 733; G-206, R. 757). Pan American offered, however, to establish a through-flight service by Pan American and Panagra over the combined routes of Pan American and Panagra, but Grace rejected the offer (P. Ex. G-212, R. 767; G-214, R. 772; G-216, R. 780; D. Ex. P-217, R. 2962).

In 1941, Grace, over Pan American's objection, filed with the CAB an application nominally on behalf of Panagra to extend Panagra's route to the United States (P. Ex. G-193, R. 735). The CAB then undertook its own investigation of the matter which became known as CAB Docket 779, *The Panagra Terminal Investigation*, 4 CAB 670 (1944). The Board held that it could not treat the Grace application as a Panagra application. On appeal by Grace to the Court of Appeals for the Second Circuit, the court modified the CAB decision to the extent of holding that if Grace could establish that Pan American's refusal to allow Panagra to apply for a route to the United States was the result of "illegality and fraud" on the part of Pan American, the Grace application should be considered a Panagra application. *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946). This Court granted *certiorari*, 328 U. S. 832 (1946), but the case was never brought to argument because Grace then agreed to a settlement of the dispute by accepting the through-flight proposal which Pan American had been suggesting (D. Ex. P-2, R. 1859; P. Ex. G-266, R. 889; G-267, R. 892).

The through-flight arrangement established through-service by Panagra aircraft operating with Panagra crews over Pan American's route from the Canal Zone to the United States. After an extensive hearing, in which the evidence indisputably made clear that both Grace and Pan American were accepting the arrangement as a settlement of their dispute over the question of Panagra's extension to the United States, and had agreed

that Panagra would not thereafter apply for a route to the United States unless *both* Pan American and Grace concurred (D. Ex. P-419, R. 3763; P-420, R. 3916; P-421, R. 4142), the CAB approved the arrangement, specifically finding that no monopoly would be created thereby (Docket 2423) (D. Ex. P-316, R. 3284).

Despite this arrangement and the consequent settlement of the controversy and difference between the joint owners of Panagra as to the propriety and desirability of Panagra's establishing its own route to the United States, Grace in 1957 again filed an application with the CAB, allegedly on behalf of Panagra, for a route to the United States. This application (Docket No. 8511) has been before the Board since that time (R. 295).

This action was instituted by the Government in 1954, at the request of the CAB (Opinion, R. 5366, n. 2), for the purpose of divesting both Pan American and Grace from their ownership in Panagra, with the "ultimate objective", as stated by the district court, of merging Panagra into the air transportation system between the United States and South America of Braniff International Airways (Braniff), which had been certificated by the CAB for routes between the United States and the Canal and South America in 1946 (Opinion, R. 5366-367). The Board took the position (*New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501, 504 (1954)), which it has recently reiterated (*United States-South American Route Case*, Docket 12895, Order No. E-17289, August 8, 1961), that there should not be more than two American flag carriers in Latin America because there was not a sufficient traffic potential in that area to support more than two American flag carriers. There was at the time, as there has been since, a two-system pattern, as Panagra was, as stated by the Board, "generally considered • • • part of the Pan American system"

(*New York-Balboa Through Service Proceeding, Reopened, supra* at 504, n. 9). The Board, while supporting divestment of Pan American and Grace from Panagra, specifically stated that Panagra should not become a third American flag carrier in Latin America as such a condition would entail a "waste of public funds or private investment" (*Id.* at 504, quoting *Latin American Air Service*, 6 CAB 857, 865 (1946)).

The complaint in this action alleged that the creation, ownership and operation of Panagra by Pan American, an air carrier, and Grace, a steamship carrier, with an understanding that Panagra would operate only on the west coast of South America from the Canal south and that Pan American would operate on the east coast of South America and from the Canal north, without paralleling of routes as between Pan American and Panagra, was a conspiracy in restraint of trade and monopolization of transportation between the United States and South America (R. 7-9). It was further alleged that, pursuant to the understanding, Panagra had been prevented from establishing its own commercial activities in the United States independent of Pan American and had been prevented from establishing commercial activities in South America independent of Grace, and that Pan American had refrained from seeking to operate on the west coast of South America and Panagra had refrained from seeking to operate on the east coast of South America and had not been permitted to extend its route to the United States (R. 8-10). It was independently claimed by the Government that the ownership of an interest in Panagra, an air carrier, by Grace, a steamship carrier, was *per se* a violation of the antitrust laws (Opinion, R. 5371).

The district court allowed the trial of the action to become as much a proceeding by Grace against Pan

American as by the Government against Pan American and Grace. Although Grace had no standing as a plaintiff or defendant to assert a claim against Pan American, it took the initiative and with its usual aggressive tactics turned its defense into an offense against Pan American, asserting that the agreement between Pan American and Grace relating to routes was only two-thirds of what the Government alleged, and those two-thirds were thoroughly legal, but as to the other third, the Pan American route between the United States and the Canal, there was no agreement, and all that was done to keep Panagra from paralleling that route was the unilateral action of Pan American and was thoroughly illegal (Opinion, R. 5396). Hence it was claimed by Grace that Pan American alone should be declared in violation of the antitrust laws and should be divested of its stock interest in Panagra, with Grace left alone in control of Panagra.

The district court held against the Government and agreed with the defendants in all respects in which they were agreed, that the formation of Panagra as a joint "pioneering venture," creating a business activity which did not theretofore exist, was "useful to the community," and that neither the joint ownership of Panagra by Pan American and Grace nor their agreement that Pan American and Panagra were "not to parallel each other's routes" was unlawful (Opinion, R. 5372, 5390, 5391-392, 5393). Insofar as the case had become Grace *v.* Pan American, however, the district court held with Grace, that the understanding of division of territories ran only east and west and did not extend north to the route between the United States and the Canal Zone (Opinion, R. 5398), and that the refusal of Pan American's representatives on the board of directors of Panagra to vote in favor of an application by Panagra to establish a route by Panagra to parallel Pan American's route between the United States and the

Circuit in *W. R. Grace & Co. v. CAB*, 154 F. 2d 271 (2d Cir. 1946), *writ of cert. dismissed for mootness*, 332 U. S. 827 (1947), in an action brought by Grace against the CAB, that made the declaration if Grace could establish before the CAB that Pan American's refusal to approve an application by Panagra for a route between the United States and the Canal was due to "illegality and fraud," any application made by Grace in the name of Panagra should be considered by the CAB as an application made by Panagra. Thus the so-called power of exclusion has been a power dependent upon its legality, and it has been open to Grace for years to accomplish its purpose if it could make the required showing that there was something illegal about Pan American's vote in the Panagra board of directors against the application which Grace wanted to make.

Assuming, however, that it could be said that Pan American had excluded Panagra from the market, still the exclusion would have amounted to no monopolization or attempted monopolization of the market. Pan American is not dominant in the market; its share of the market does not meet the criteria of dominance; it has no control over entry into the market or the fixing of rates, both of which are under the control of the CAB, which can admit as much or as little competition as it determines desirable. Pan American has no power whatever to exclude competition. Inasmuch as Panagra was a creation of Pan American and was created in the formative years of air transportation to serve as a connecting and complementary carrier with Pan American, it cannot be said that Panagra is a "competitor" of Pan American or that any assumed exclusion of Panagra from the market was exclusion of a competitor. But even if it could be held so to be, still under all the market conditions,

the exclusion of this single "competitor," which is the only carrier over which Pan American has any power, would not be monopolization of the market.

IV.

The CAB has primary jurisdiction of the subject matter of this action and the court should not have entertained the action. All the facts, issues and findings in this case are directly and intimately concerned with, affect and even determine matters which are within the primary and exclusive jurisdiction of the CAB. The entire Latin American route pattern, to which all questions of the routes involved in this action are subsidiary, the allocation of routes and certification of carriers, including all considerations of the ownership of carriers in these connections, fall within the exclusive jurisdiction of the CAB. The court should not have entertained the action when so much or all of the subject matter is within the primary and exclusive jurisdiction of the Board, or, at least, upon entertaining the action, when it found that the complaint was not sustained and the relief requested was not warranted, the court should have dismissed the complaint and not have undertaken, as it did, to frame a decree altogether at variance with what the CAB desired, and one which defeats rather than aids the Board in the exercise of its jurisdiction.

The decree of the court in this action is a demonstration of the error of entertaining the action. The court, by ordering the divestment of Pan American but not Grace, has created the very condition which the CAB most wanted to avoid, that is, Panagra's becoming a third American flag carrier into South America. The decree would remove the possibility of Panagra's fitting into a two-system pattern for American flag carriers into South America, by severing it from Pan American, one of the

two American carriers into South America, and preventing its merger into Braniff, the other American carrier into South America.

The decree more than defeats national policy in air transportation, however. The court in its decision has undertaken to make rulings about routes which are an interference with and usurpation of the jurisdiction of the CAB. It has, on the one hand, declared that the route between the United States and the Canal is free from any agreement between Pan American, Grace and Panagra, while the route from the Canal down the west coast of South America is subject to their agreement that Pan American will not compete with Panagra. The court has similarly declared that the route down the east coast of South America is subject to an agreement of the parties that Panagra shall not compete. All of these related route matters cannot be dealt with in this way by a court. The fundamentals of administrative law have been violated by the court's exercise of jurisdiction and its decision.

V.

The CAB's approval of the through-flight arrangements in 1947 confers antitrust immunity on Pan American in respect to the holding of the district court that Pan American has violated the antitrust laws by voting its stock ownership in Panagra in a way to prevent the filing of an application by Panagra for a route to the United States. The through-flight arrangement was a substitute for the suggestion of an independent route for Panagra and a settlement, approved by the CAB, of the controversy over Panagra's extension to the United States. The agreements approved by the Board and the evidence taken by the Board at its hearing on the application to establish through service made it perfectly clear that the contro-

versy was settled by the through flight arrangement, that the agitation by Grace for an independent route for Panagra was ended, and that, while the possibility of Panagra's applying for a route at some future time was not foreclosed, such an application could and would be made only if Grace and Pan American concurred and Panagra's board of directors authorized the making of the application.

The Board's order approving the through flight agreements contained the finding that the public interest would not be adversely affected by the arrangement and that no monopoly would be created thereby. The Board thus made a finding which is *res judicata* against the finding by the district court that Pan American's actions with respect to the Panagra route application constituted monopolization. Under Section 414 of the Civil Aeronautics Act, the Board's approval of the through-flight arrangements immunized Pan American from any antitrust charge such as the district court has distilled and decided against Pan American.

VI.

Assuming that the district court's finding of an antitrust violation on the part of Pan American is sustainable, the remedy of divestiture decreed by the court is unnecessary, unwarranted and unjustified.

Divestiture is an extremely harsh remedy, adopted only in rare cases and only when no other remedy is adequate for the requirement. In this case a remedy by injunction would be fully adequate and would be preferable on every consideration over the remedy of divestiture. As there has been no holding of illegality in Pan American's ownership of Panagra's stock, and that ownership is not the fruit of any illegality, and the only violation which has been found is with respect to the exercise of that owner-

ship in the one particular of Panagra's extension to the United States, the remedy of injunction, such as is contained in the decree of the district court, against Pan American's interfering with the making of any route application by Panagra, is entirely adequate to meet any requirement for a remedy.

Divestiture would be a serious prejudice to the public interest, in creating a situation which would prevent the CAB from carrying out its declared policy of carrier alignment and avoiding three American flag carriers in the Latin American market. Divestiture would be seriously prejudicial to Panagra in depriving Panagra of the benefits of the many services, facilities and offices of Pan American which Panagra has enjoyed throughout its life. Divestiture would be unconscionably penal to Pan American. First, it would be extremely harsh to deprive Pan American of its investment in Panagra, which it created and has built up and maintained not only by financial support but with all of the services and facilities of the Pan American organization. Second, it would be impossible for Pan American to realize the value of its Panagra stock upon a sale of its interest. With Grace, a steamship operator, left in control, with all the uncertainties about Panagra's future divorced from Pan American, prospective investors would not be interested in purchasing the stock for any amount approaching the present value. Third, the tax consequences of divestiture would be confiscatory. As Pan American's investment in Panagra dates back to its creation and the formative years of air transportation, it has practically no tax base in the stock, so almost the total proceeds of the sale would be subject to a capital gains tax of 25%; or if the stock were distributed to Pan American stockholders, they would have to regard the value of the stock distributed as ordinary income, upon which they would have to pay a tax at ordinary income tax rates.

ARGUMENT

POINT I

The Court has jurisdiction to hear this appeal.

In its order of January 15, 1962, docketing this case for argument (R. 5449), this Court stated that further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. We assume that the jurisdictional question thus suggested is whether the order of divestiture of the district court—that Pan American shall divest itself of its stock in Panagra "at such time and pursuant to such plan of divestment as the Civil Aeronautics Board shall, subject to the approval of this Court, direct pursuant to the standard prescribed by Section 102 of the Federal Aviation Act"—is of sufficient finality to constitute a final order under Section 2 of the Expediting Act, under which this appeal is taken. Pan American believes that there is sufficient finality to the order of the district court and that this Court's jurisdiction of the present appeal is settled by the recent decision of this Court in *Brown Shoe Co. v. United States*, 370 U. S. 294 (1962).

The jurisdictional question considered in the *Brown Shoe* case was whether an order of divestiture had sufficient finality when it did not include a specific plan of divestment but reserved such a ruling pending the filing of suggested plans for carrying into effect the court's order of divestiture. This Court found that such an order did have "sufficient indicia of finality" to hold that the judgment was properly appealable before submission of the plan of divestiture.

Noting that the approach to the question of "finality" is pragmatic and the tests practical, the Court in the

Brown Shoe case recognized three indicia of "finality": first, that the district court disposed of the entire complaint filed by the Government; second, that the character of the decree to be entered required careful and perhaps extended negotiation and formulation and that the unsettling influence of uncertainty as to the affirmance of the initial, underlying decision compelling divestiture, and the delay in withholding review of the issues of the case until the details of divestiture had been approved by the district court and reviewed by this Court, could well mean a change in market conditions sufficiently pronounced to render impractical or otherwise unenforceable the very plan of asset disposition for which the litigation was held; and third, that holding such a decree as was entered by the district court to be less than "final" and thus not appealable would require a departure from the settled course of this Court's practice.

This case meets each of the criteria above set forth. First, the district court has disposed of the entire complaint. By dismissal of the action as to Grace and Panagra and by decreeing divestiture as to Pan American, the district court has dealt with and disposed of all the charges of the complaint and all the Government's prayers for relief.

The second criterion is also fully met. The preparation of a plan of divestiture will require care and time. Withholding review of the issues in the case until the details of divestiture have been approved by the district court and reviewed by this Court would have precisely the same unsettling effect of uncertainty and risk of change in market conditions, under which buyers and bankers must be found to accomplish the order of forced sale, which this Court in the *Brown Shoe* case foresaw as rendering impractical or unenforceable the very plan

of asset disposition for which the litigation was held. Indeed, it must be said that this consideration is even more applicable to the present case than to the *Brown Shoe* case because there are constantly changing factors, other than market conditions, affecting the interest of buyers and bankers in the ownership of an airline, particularly an airline engaged in international transportation. These factors include rulings of the Civil Aeronautics Board and the actions of foreign governments in respect to the certification of routes and regulation of operations. Furthermore, leaving unresolved, until a plan of divestiture is approved and reviewed, the issue as to whether, if any divestiture of Panagra stock is directed, it will include a divestiture of the Grace interest in Paragra as well as the Pan American interest in Panagra, leaves open and subject to the most unsettling uncertainty the question, profoundly affecting buyer and banker interest, whether there will be any stock to be sold, and, if so, whether a half ownership of Panagra or a full ownership of Panagra.

Equally or even more important, as a matter of vital public interest, is the effect of the unsettling uncertainty upon the discharge by the CAB and the President of their responsibility for establishing the route pattern in international air transportation and certificating routes and carriers. Obviously, this function cannot be performed and national policy implemented so long as the underlying decision of the district court remains unreviewed and it remains undetermined whether Pan American and/or Grace, or neither of them, will have an interest in Panagra.

The third criterion is met exactly as in the *Brown Shoe* case. The Court there stated that it had "consistently reviewed antitrust decrees contemplating either future

divestiture or other comparable remedial action prior to the formulation and entry of the precise details of the relief ordered."

In addition to the criteria mentioned and met in the *Brown Shoe* case, there is a reason, sufficient in itself, why this Court should consider the judgment of the district court final and ripe for review. The judgment contains an unconditional injunctive provision which is final (R. 5435). It is that Pan American is enjoined from taking any action which would interfere with the filing or processing of applications before the CAB by Panagra to alter, amend, modify or extend its routes. Not only is this injunction a final order, but it relates to another question of particular pertinency and large importance in this case which would alone dictate a holding that the judgment is final and should be reviewed prior to the formulation of a plan of divestiture. This is the question of remedy and whether divestiture is a proper remedy at all, even assuming that the district court was correct in its conclusion as to an antitrust violation on the part of Pan American. We maintain that if any violation is made out and remedy is required it is not a remedy of divestiture and that a remedy of injunction would be sufficient, serve better and be decidedly preferable in every consideration. It is, therefore, we submit, of the utmost importance, both in the public interest and in the interest of the parties, that the question of relief and remedy, if any is warranted and indicated, be determined on appeal at this time and not be left until after a plan of divestiture is framed with all the time and thought which will be required for the formulation of such a plan.

We submit, therefore, that for all the reasons which this Court found to exist in the *Brown Shoe* case, and for the further reasons enumerated herein, the judgment

of the district court has a finality which makes it appealable to this Court under Section 2 of the Expediting Act at this time.

POINT II

The basic findings by the district court of legality in the joint ownership of Panagra and the division of territories required a dismissal of the action against Pan American. Pan American's vote, as a half owner in a joint venture, against an extension of the venture beyond its defined purpose, cannot be held illegal.

The district court decision is a multiplicity of errors, which are demonstrable from the decision itself without the necessity of looking at the record. When the record is consulted, it becomes apparent that the decision is as erroneous in fact as it is in law.

The district court's first error was to decide a case which was not brought. Its final error was to enter a decree which is not only unwarranted and unjustified as to Pan American, but which runs directly contrary to national policy in air transportation as declared by the agency of government vested with the responsibility of formulating and effectuating that policy. The major intermediate error of decision was holding—in a case where the charge was a conspiracy and combination upon the part of Pan American and Grace in their organization and ownership of Panagra as a joint venture and division of territory between Pan American and Panagra, and in which the charge was in no respect found to be sustained—that Pan American had unilaterally violated the anti-trust laws in the normal exercise of its legal ownership of Panagra stock in voting on the question of the joint

The district court's erroneous approach and treatment of the case is further manifested by its discussion of the agreement between Pan American and Grace in relation to Panagra (Opinion, R. 5395-398). That discussion is not addressed to the claim of the Government, but poses the matter as one of a difference of version and contest as between the defendants, with the Government being regarded almost as a bystander and being alluded to only with the reference that it "apparently accepts" the Pan American version (Opinion, R. 5395-396). It would not be gleaned from the court's discussion of the subject of the agreement that it was the Government who was the complainant, and that it was the heart and whole of the Government's complaint (except for the claim that Grace's ownership as a surface carrier of an interest in Panagra was itself a violation of the antitrust laws) that the division of territories claimed to be illegal covered all the territories in which the two airlines operated and that the limitation on Panagra's expansion to the United States was only part of that understanding (Complaint, R. 8-9). Similarly, the district court mistakenly stated that "the thrust of the government's evidence was directed to the alleged monopolization or attempted monopolization by Pan American" (Opinion, R. 5398). The thrust of the Government's evidence, in line with its complaint, was directed entirely to the allegation of a combination in restraint of trade and monopolization by Grace and Pan American in their joint organization and operation of Panagra (R. 507-905, 1254-1358). There was not a suggestion in the complaint or in the government's evidence that Pan American was acting unilaterally in the alleged monopolization, or other than in pursuance of the understanding of the parties in their organization of Panagra.

Although referring to the "unholy union" between Pan American and Grace, the district court gave no specification in support of the characterization, but specifically found that it involved "no violation of the antitrust laws" (Opinion, R. 5391-392, 5393-394). Because the union was found to be unhappy, however, the court set about treating the action as if it were an action for a divorce brought by Grace against Pan American and the issue was custody of their child, and then reached the wrong result even on that premise.

We shall now point out that the determination made by the district court is inconsistent with the court's basic findings and is refuted by the court's opinion. From the findings made, which we shall forthwith state, we submit that it is impossible to draw the conclusions reached by the district court that the territorial division between Pan American and Panagra, found to be legal, did not include the original route established by Pan American between Miami and the Canal, and that Pan American's protection of that route from the destructive competition of its jointly-owned company, as proposed by the other joint owner, was not every bit as legal as the protection of the joint company's west coast route by Grace. On the contrary, all that is found by the court, except its ultimate conclusion, as will readily be seen, proves that the joint venture which is Panagra was organized only to operate an airline along the west coast of South America from the Canal Zone south, that neither Grace nor Pan American was interested in joining in any other operation, that the service there to be established was to be a connecting service with Pan American's service over its route from Miami to the Canal, that the two services were to be complementary in combination to provide air transportation from the United States down the west coast of South America, that, of course, Pan

venture's expansion beyond its designed and defined purpose.

There was no allegation or charge of such a violation in the complaint. There was no claim by the Government at any time that Pan American's voting of its stock in Panagra on the question of Panagra's extension was in itself a violation of law. There was no request and plainly no desire upon the part of the Government that the case be considered as if the charges against the defendants were several as well as joint, or that a decision be reached or considered which might divest Pan American but not Grace. Plainly, such a result would be the worst possible result, judged by the national policy in air transportation which had been declared by the CAB, for under such a decree Panagra could not fit into a two-system pattern for American flag carriers into South America, because it would no longer be part of the Pan American system and would not become part of the Braniff system, but would become what was least desired, a third American flag carrier into South America.

Indeed, if the case were to be considered on the basis of a third possible alternative to a dismissal of the complaint or divestment of both Pan American and Grace as requested in the complaint, that is, the possibility of a dismissal as to one defendant and divestment as to the other, the result required would be the opposite of the one reached. The factual statement of the case shows indisputably that it was Grace, not Pan American, whose agitation and aggrandizement caused the friction which prompted the Government to institute this action to free Panagra from its divided ownership. It was Grace, not Pan American, which was to be eliminated from the airline industry by the successful prosecution of the action, to the end that the American airline alignment in South

America would be, as it was, a two-system pattern, the only difference being that Panagra would become part of another system instead of remaining part of the Pan American system under a divided ownership with Grace. If, however, that arrangement was not to be achieved through prosecution of the action, and the complaint was not to be dismissed, then, certainly, the judgment should have been one of divestment of Grace rather than Pan American, so that the two-system pattern could be preserved. There would then be the obvious virtue of having Panagra an outright part of the Pan American system, as against the evil of having it become a third American carrier in South America and still remain under divided ownership.

The error which pervades the decision of the district court in treating this action as if Grace were a plaintiff against Pan American, although Grace is only a defendant in this antitrust action with no complaint or cross-claim against Pan American and with no standing to become a complainant or seek relief, is manifested at the very opening of the court's opinion with the statement that "Nominally" this is a "government antitrust action," but "Actually" it is "a bitter family quarrel * * * arising out of the unhappy and quondam unholy union of Pan American and Grace, each of whom owas 50% of the stock of Panagra" (Opinion, R. 5366).

The district court thus adopted an approach to the action, which it followed throughout to the incongruous end, of regarding the action as being only "nominally" a Government antitrust action, and rendering a judgment nominally in favor of the Government but actually in favor of Grace against Pan American, with the worst possible consequence to the Government and the public.

American's route was not to be paralleled by Panagra's route any more than Panagra's route was to be paralleled by Pan American's route, and that it was altogether legal and proper for Pan American to vote its half interest in Panagra against a change in the terms of the joint venture which would turn Panagra into a competing rather than a connecting carrier with Pan American, particularly as Pan American was willing and urged that the combined routes be so used that through flights could be made by Panagra planes over both routes.

The opinion states that in 1927 Pan American began the formulation of plans for the establishment of a complete system of air transportation serving "all parts" of the Caribbean and Central and South America (Opinion, R. 5373). In 1928 it acquired a concession from the government of Peru for the establishment of air transportation between the United States and Peru and established air service between Miami and the Canal Zone. In January 1929 Pan American acquired the stock of a Colombian airline, operating between Colombia and Ecuador, which acquisition, in the words of the opinion, "opened the way for the establishment of an American flag west coast airline" (Opinion, R. 5375). Similarly in 1930, Pan American established air service from the United States down the east coast of South America to Buenos Aires (Opinion, R. 5382).

In 1928 Grace had begun to inquire into the possibilities of a west coast airline and became apprised of Pan American's activities and interest in a west coast route. Officials of the two companies conferred with a view to joint participation in a "west coast" undertaking. As stated in the opinion, Grace, which was aware of the competitive potential of air transportation with its large steamship investments, was "limited" in its interest "to

the west coast of South America" and "to the proposed Canal Zone-Valparaiso route". (Opinion, R. 5376-377, 5388-389).

In the fall of 1928 Pan American and Grace entered into an agreement evidenced by two letters quoted in full at page 13 of the opinion (R. 5377-378, n. 7). The letter from Grace was in confirmation of an arrangement of association for the commencement of an airplane service in Peru, "with the view" of "ultimately" inaugurating a through mail service from the Panama Canal to Valparaiso, Chile. The initial arrangement was for the formation of a corporation of most modest capital, jointly owned, to acquire a Peruvian concession and to study the costs of operation on a route from the Panama Canal to Valparaiso. The letter continues that if *Pan American* shall determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the joint company will be used in such service, and Grace should have a reasonable time to determine what interest, if any, it should take in the company in addition to its initial investment, such interest not to exceed 50% of the total capitalization. The letter also specifies that Pan American shall "have charge of the operation of the service from the Canal to Valparaiso," and the Grace "houses" on the west coast of South America will be the "agents of the company on a reasonable compensation basis."

Confirmation from Pan American was of an association of the two companies "in the development of air transportation on the West Coast of South America" (Opinion, R. 5378, n. 7 (con't.)).

The resulting corporation was Panagra, which was awarded the mail contract between the Canal Zone and Chile, as the Postmaster-General stated, on the strength

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riers made competitive on either section without their being made competitive on both sections and all along the line. Otherwise, the carrier with both routes would get nearly all the traffic on both routes and replace the carrier with only one route.

The undisputed evidence here is that if Panagra were given a route between the United States and the Canal unless Pan American was given a corresponding route from the Canal down the west coast of South America — Panagra would take eight-ninths of all the traffic moving over the route between the United States and the Canal (P. Ex. G-1139, R. 273, 1703; D. Ex. PS-116, R. 245, 4595; R. 366, 532). This is necessarily so as to all the through traffic, which is two-thirds of the traffic over the route, as to which the district court made the observation that "generally, all through traffic between points on Panagra's west coast route and Miami or other United States cities conveniently reached through the Miami gateway would be almost wholly diverted from Pan American" (R. 5405). This observation would be almost equally true as to the local traffic because the through carrier would have the ability of maintaining more frequent service.

Thus, there is only an illusion of competition in the idea that Panagra should parallel Pan American between the United States and the Canal, unless, correspondingly, it is assumed and assured that Pan American will parallel Panagra from the Canal south down the west coast of South America. So it is beyond reality, rationality and possibility that there could have been any such one-sided understanding as Grace asserts and which the district court has found, that Pan American was not to parallel Panagra's route south of the Canal, but Panagra might parallel Pan American's route north of the Canal. Indeed, the Grace pretense of such an understanding and its

pose as Panagra's champion against the "suppression" of Panagra by Pan American as a "monopolist" makes things seem just the opposite of what they are. It is Grace who would effectively eliminate Pan American from the route north of the Canal, and who is attempting monopolization, by having Panagra, which it has done everything to convert into a Grace airline, keep for itself, free from Pan American competition, the route south of the Canal, with the consequence that Panagra would have for itself the whole of the service from the United States to the west coast of South America.

We need not and shall not labor the "details" of the agreement respecting the division of territories and its application to Pan American's initially established route between the United States and the Canal, because if that agreement was not expressed, as was clearly the fact, it was implicit (*Latta* v. *Kilbourn*, 150 U. S. 524, 541 (1893)), and inherent in the "method of organization of the joint company," which the district court found to be "calculated" to give each participant "negative control" to "insure" against the expansion of the operations of the company in competition with the "respective" independent lines" of the parties (Opinion, R. 5389).

We shall expand in a moment on the inherence in the agreement of this "negative control," which the court correctly found to be legal, although inconsistently and incorrectly finding that it was illegal for Pan American to exercise that control to prevent Panagra's expansion into competition with Pan American's independent line. Obviously, the quality of legality in this limitation upon Panagra's expansion is exactly the same whether explicitly agreed upon or not, and the exercise of the authority which Pan American had under the method of organization of Panagra to prevent its expansion in competition with Pan American's independent line rests on the same

legal base as the existence of that authority. It is impossible to sustain the district court's conclusion that the existence of the authority was legal but the exercise of it was illegal. The agreement of the parties in the organization of Panagra was thus either illegal *ab initio*, contrary to the district court's finding, or being legal, as the district court found, remains legal in its effectuation precisely in accordance with the intention of the parties which was inherent in the method of organization of Panagra.*

It is supererogation, therefore, to dwell upon the "details" of the agreement of the parties with respect to the territorial division, but accuracy compels the observation that all the evidence, commencing with the exchange of letters between the parties agreeing upon the formation of Panagra and its field of business and operations, with no evidence to the contrary, establishes that the division protected Pan American's route between the United States and the Canal Zone as well as Panagra's route south of the Canal Zone.

Not only would Pan American, which had just established its own route from the United States to the Canal (Opinion, R. 5395), and was about to establish its route

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* We need not, in the light of the district court's findings of legality in the formation of Panagra as a joint venture of a pioneering nature creating a new business not theretofore existing and beneficial to the community, retrace the elementary ground covered before the district court as to the legality of joint ventures in relation to the anti-trust laws. See *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (6th Cir. 1898), *modified and aff'd*, 175 U. S. 211 (1899); *United States* v. *Imperial Chemical Industries, Ltd.*, 100 F. Supp. 504, 557 (S.D.N.Y. 1951); *United States* v. *Minnesota Mining and Mfg. Co.*, 92 F. Supp. 947 (D. Mass. 1950); *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593 (1951); *United States* v. *Imperial Chemical Industries, Ltd.*, 105 F. Supp. 215 (S.D.N.Y. 1952); *Restatement of the Law of Contracts* §516; Brewster, *Antitrust and American Business Abroad* 206 (1958).

down both the east and west coasts of South America, and which was persuaded to take Grace as a partner *only* on a west coast operation to connect with Pan American's operation from the United States to the Canal to make up a combined and complementary service between the United States and the west coast of South America, never have consented to or considered a partnership arrangement which would carry the possibility of Panagra's becoming a parallel carrier between the United States and the Canal, but Grace was wholly uninterested; as the district court found, in any route other than that south of the Canal down the west coast of South America (Opinion, R. 5376-377). It was positively disinterested in the route above the Canal and wanted to leave that route to the trying development by Pan American alone. That much had to be admitted by Grace at the trial with the explanation in its trial memorandum that Grace was not interested in the "hazardous water crossing of the Caribbean or the alternative of the difficult land route through Central America," but only in a route starting from the Canal which was "a focal point for a large number of steamship companies serving South America from the United States, such as the Grace Line, and from Europe" (Grace Trial Memorandum, p. 11).

And more eloquent than any of Grace's protestations at the trial about the application of the territorial agreement to the route north of the Canal are the conclusive admissions made *ante litem motem* by its senior officers who negotiated the arrangements and represented Grace in all its early dealings with Pan American in respect to Panagra.

When Grace's president Iglehart first had the thought of Panagra's operating north of the Canal, he broached

of *Pan American's* "extensive preparation for the operation" and its acquisition of franchises to operate in the countries to be served and its then existing operation over a considerable portion of the route. The Postmaster-General also noted "in addition" that "it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly established service by sea along the whole line of the proposed air mail route." The contemplated service was established in 1929 and shortly thereafter was extended from Santiago to Buenos Aires (Opinion, R. 5380-381).

As stated in the opinion, United States air mail service throughout South America was "rounded out" by the "entire northern and eastern part, and the northern portion of the western part from Miami to the Canal Zone, [being] operated by Pan American, and the southern portion of the western part from the Canal down the west coast and across the Andes being operated by Panagra" (Opinion, R. 5385).

Under a heading "Conclusions Re Conspiracy" (Opinion, R. 5388), the opinion states that the only agreement which approaches conspiracy is the "understanding that Pan American and Panagra were not to parallel each other's routes" (R. 5390)—a "division of territories," which the court found had "long been known to this government" (Opinion, R. 5388).

After reiterating that Pan American's interest as an airline owner extended "throughout" Latin America and that Grace's interest "was confined to the west coast of South America where it was strongly established, and that was the only area where it faced competition from an airline" (Opinion, R. 5388-389), the opinion states that by joining in a joint venture "on the west coast" Grace was assured against the entry of an independent American

airline competitor into its west coast domain and Pan American was freed from American flag competition in the rest of Latin America. Their "method of organization" of the joint company was "calculated," the opinion continues, to give each "negative control" to "insure" against expansion of the operation of the joint company "in competition with their respective independent lines" (R. 5389). As also stated, "Their combined interests on the west coast could insure the greatest possibilities for the success of an American carrier in that area, and at the same time protect their independent systems from the competition of such carrier" (R. 5389).

The district court's appraisal of the arrangement was that "The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America * * *. The union of their physical and technical resources assured the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist. *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (6th Cir. 1898), *modified and aff'd*, 175 U. S. 211 (1899)" (Opinion, R. 5391-392). Thus, "The defendants' dominant position in South America which they enjoy today, and have over the years, may be explained in simple terms without unlawful implication * * *" (Opinion, R. 5390).

Speaking specifically of the "Division of Territories," the opinion states:

> "Consideration of the defendants' agreement or understanding with respect to the respective spheres of operations for the two airlines, when viewed in

> the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved, as well as the relation of the parties one to the other and the nature of the industry itself, compels the conclusion on our part that it involved no violation of the antitrust laws" (R. 5393-394).

Having so stated the facts, factors and considerations which evidence, explain and justify the establishment of Panagra for operation on the west coast of South America from the Canal Zone south and the understanding that "Pan American and Panagra were not to parallel each other's routes," the opinion unexplainably and inconsistently begins at page 31 (R. 5395) to narrow and vary in "details" the agreement respecting the "division of territories" upon which the defendants "no doubt" agreed. An issue is then drawn and it is stated that Pan American says that the agreement, reached before the formation of Panagra, was that Panagra was to operate only on the west coast of South America from the Canal Zone down (which was precisely the scope of Panagra's operations as agreed between the parties) and that Pan American would conduct operations throughout the rest of South America and on the route between the United States and the Canal Zone, for which route it had already secured the United States mail contract and where it was already operating (Opinion, R. 5395). Grace, on the other hand, it is said, contends that the territorial division was made only *after* Panagra's formation and was only on east and west coast lines and that "there was no intention one way or the other contemplated *mutually* by them with respect to possible extension of Panagra's lines to the United

States." The opinion also states that "the government apparently accepts Pan American's version of the agreement" (Opinion, R. 5295-296). Without explanation or citation of the record, the district court states that it finds "the agreement between the defendants as to spheres of operation and its evolution was substantially in the manner described by Grace" (Opinion, R. 5298).

The "agreement," which was previously found to be "not to parallel each other's routes" (Opinion, R. 5280), is thus narrowed to be "not to duplicate or parallel each other's service in South America," and this agreement, which it is found Grace "invoked successfully" (Opinion, R. 5296-298), is held to be "consistent with the best interests of this country in establishing and developing American international aviation" (Opinion, R. 5298). On the other hand, the court found in the "Pan American suppression of Panagra efforts to extend to a United States terminal," a sufficient basis upon which to predicate the conclusion that Pan American had unilaterally monopolized that sector of commerce between the United States and South America and between the United States and the Canal Zone (Opinion, R. 5298).

This finding is made despite the facts found that in the "formative years" of air transportation it was the policy of this country, as carried out by the Post Office Department, which was then the government agency for the development and subsidizing of American aviation in the international field, to award but one mail contract for each route and to subsidize but one American carrier in a particular sector (Opinion, R. 5294), "competition" being "economically impossible, and most likely detrimental to the sound development of American flag service" (Opinion, R. 5294). The court was able to perceive that there emerged from the evidence a "definite policy of the

government" approving "zoning" for the operations of the American international carriers, but the court only goes so far as to say that this "zoning" was in the "nature of east and west coast spheres," as was "arranged between Pan American and Panagra" (Opinion, R. 5395). There is, however, no statement of the evidence or of reason to support the intimation that the policy ran only east and west and that there was something in the "nature" of those directions which defined and distinguished policy with respect to "spheres." But the inconsequent and wholly unsupported conclusion is reached that "It is only with respect to the northern extension of both lines to the United States that restraint of competition between Pan American and Panagra whether by agreement or unilateral action, in our opinion, falls under the condemnation of the antitrust laws" (Opinion, R. 5395).

We submit that there is no basis, and none is suggested in the opinion, for the conclusion that the agreement between Pan American and Grace "not to parallel each other's routes" was confined to South America, along east and west lines, and did not extend to the route from the United States to the Canal Zone, which was the first and basic route established by Pan American. Likewise, there is no basis or suggestion of a basis in the opinion for holding that the application of the non-paralleling principle to the route between the United States and the Canal Zone is any less legal than the division within South America as between the east and west coasts. Patently, every fact and consideration bearing upon the existence and legality of the territorial division applies as well to the service between the United States and the Canal as to the service from the Canal down the west coast of South America or down the east coast. Every-

thing stated in the opinion of the court down to its inconsequent conclusion shows that the territorial division included the route from the United States to the Canal Zone and that the division as applied to that route was as legal for the same reasons as the division between east and west was legal. We submit that the district court's findings of fact on these issues were "clearly erroneous" and should be reversed. *United States* v. *duPont & Co.*, 351 U. S. 377, 381 (1956); *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 393-395 (1948); *e.g.*, *United States* v. *duPont & Co.*, 353 U. S. 586, 593 ff. (1957).

The crucial fact, about which there is no question, which the district court overlooked or ignored, is that Panagra was created for the specific and only purpose of being a *connecting* carrier with Pan American at the Canal Zone, and to serve with Pan American as *complementary* carriers to supply together air transportation from the United States to South America (*e.g.* R. 216-217; D. Ex. P-96, R. 2520, 2522; P-108, R. 2558, 2559-561). This fact is highlighted by the fact that when Grace first proposed that application be made for a route for Panagra from the United States to the Canal, the agreement reached between the principals was that such an application should be made only if Pan American's connections with Panagra at the Canal should become inadequate (P. Ex. G-190, R. 729). The idea that the two carriers in this joint venture and complementary arrangement would ever become duplicatory, paralleling and competitive over the same routes would never have been entertained. Therefore, as a certainty, the non-paralleling understanding applied equally to both sections of the combined routes, Pan American north of the Canal and Panagra south of the Canal. This is the more obvious when it is understood that the connection cannot be severed and the car-

the idea to vice president Roig, who had been Grace's principal representative in connection with Panagra, in a memorandum of March 1, 1937 (P. Ex. G-118, R. 582), suggesting as a remedy for his charge of inadequacy of Pan American's service between the Canal and Miami, that Douglas Campbell, a former employee of Grace who had entered the employ of Panagra, "might begin a careful study looking toward our putting in our own service from Miami to Cristobal and possibly continuing on to Cali by way of Medellin." Roig responded that,

> "whether it suits to meet one breach of agreement *by threatening another* is a point I find it hard to decide. It may depend somewhat on whether we would prefer to scrap Panagra at the expiration of the present mail contract and form a company of our own to compete with Panair on the new contract" (Italics supplied). (P. Ex. G-119, R. 583).

Shortly thereafter, however, Iglehart pursued the idea with full consciousness of the agreement, taking an occasion, when there was a possibility that Pan American through its subsidiary SCADTA might invade Panagra's west coast territory, to instruct Grace's vice president Garni to notify Trippe, president of Pan American, "that if he backs SCADTA in going to Guayaquil or Quito or helps them to do so, we will be entirely free to enter into competition with him as we would consider it a definite breach of his agreement" (P. Ex. G-118, R. 582).

That, despite its holding, the district court must have thought that the territorial agreement was thoughtfully complete and not thoughtlessly incomplete is revealed from the statements in the opinion: "Their combined interests on the west coast could insure the greatest possibility for the success of an American carrier in that area,

and at the same time protect their independent systems from the competition of such carrier. An agreement to divide the territory of operations between the two air carriers is consistent with such a design, and it is equally consistent for Grace to have agreed not to seek to extend their joint company to the United States in competition with Pan American" (Opinion, R. 5389-390).

These sentences have no meaning or relevance except as a finding that the agreement "to divide the territory of operations between the two air carriers" so as to "protect their independent systems from the competition of such carrier [Panagra]" included the Pan American system from the United States to the Canal Zone, and that the protection was legal in all respects.

Apart from agreement, however, Pan American had the same reason and legal justification for not extending the operation of its jointly owned company into competition with its own route from the United States to the Canal Zone as Grace had for insisting that Pan American not enter into competition with the joint company along its route south from the Canal down the west coast of South America. And certainly, if Grace was entitled by agreement to protect both itself and the joint company from Pan American's competition with the joint company's route, Pan American was equally entitled, whether by agreement or not, to protect its route from competition by the joint company. In this context, on the charge of monopolization, the legality of action with respect to route competition between Pan American and Panagra cannot depend on agreement. Grace cannot justify the protection of Panagra from paralleling by Pan American by the assertion of agreement or tar Pan American with illegality in protecting itself from paralleling by Panagra by the assertion of lack of agreement. What was done

the route between the United States and the Canal was a unilateral antitrust violation on the part of Pan American. When the bold thought of Panagra's applying for such a route, an acknowledged breach of Grace's agreement with Pan American, first occurred to the Grace officials, Roig stated to Iglehart the only possibly legitimate way of Grace's pursuing the matter, and that was "to scrap Panagra at the expiration of the present mail contract and form a company on our own to compete with Panair on the new contract" (P. Ex. G-119, R. 583). It was as unbelievable to Grace then as, we submit, it is unbelievable today, that one of two joint venturers could be expected to countenance the diversion of the venture away from its purpose, as a business connecting, complementary and non-competitive to his own, into a business competitive to and destructive of his own, and be obliged to consent or be ousted from the venture as an antitrust violator.

No case, decision or authority is cited in the opinion of the district court, and we can confidently state that none exists, which would support such a proposition or the decision which the district court has reached. Indeed, we know of no case in which a joint venturer, in a venture legal in its inception, has been held to have violated the antitrust laws by his refusal to consent to an extension of the venture.

The decision here goes even further in its qualifications of the rights of a partner than has been assumed. The case which the court has stated in its opinion is one of the absolute refusal of Pan American to allow Panagra any access to the United States. To test and disprove the validity of the court's thesis we have, up to this point, assumed the case to be as stated. But this is not the

case. Pan American has agreed, and for years before had urged, that arrangements be made for through-flights over Pan American and Panagra routes so that Panagra planes can make a continuous flight over both routes to and from the United States (D. Ex. P-186, R. 2890; P-217, R. 2962; P-228, R. 2988; P-230, R. 2993; P-231, R. 2998; P-232, R. 3001; P-233, R. 3006; P-355, R. 3449, 3453; P. Ex. G-212, R. 767; G-214, R. 772; G-216, R. 780; G-241, R. 827). The district court has dismissed this important fact from consideration and thereby held that a joint venturer must be more than cooperative in meeting his co-venturer's desire for the extension of the business; he must yield his judgment as to how it may and should be done and abdicate in favor of letting his partner decide that it should be done in a way that will put him out of his own business.

The district court's view of a joint venturer's position and obligation, as expressed or indicated in its opinion, is not only unprecedented and untenable, it would have, if accepted, the most serious consequences, prejudicial to the public interest, of discouraging joint ventures altogether and particularly the kind of pioneering ventures and creative developments around the world which are so needed and which call for pooling of resources, ingenuity and sustained effort. The joint venture of Grace and Pan American in Panagra, found to be so "useful to the community" (Opinion, R. 5392), is only illustrative. But there would be no such ventures—certainly Pan American would not have considered taking Grace as a partner in Panagra—if the view which the district court has taken of the duty of a partner to let the venture destroy or compete with his established business were the law.

No principle or precedent of antitrust, corporation or partnership law is cited by the district court, or any

by both Pan American and Grace in respect to route protection from paralleling as between Pan American and Panagra was alike legal or illegal. A finding of legality, as made by the district court, on the part of Grace, dictated a like finding of legality on the part of Pan American.

The legal justification of the division of territories and protection of routes, alike for Pan American and Grace, must not be lost sight of. The principals were not competitors entering into a conspiracy to carve up territories and cut off competition. They were joint venturers in a pioneering enterprise creating a type of business which had not existed before. As such joint venturers they were entitled to agree upon the scope of their venture, and naturally the scope could not be changed or extended unless they agreed, and neither was obliged to approve the extension of the venture into competition with its own business. The district court remembered all this when approving Grace's part in the venture, but forgot it when condemning Pan American's part.

It is the all-important fact in this case that it is a joint venture which is involved and that the sole anti-trust violation found by the district court is a normal exercise of a joint owner's control over the venture in respect to its expansion beyond the scope of the venture contracted for. In the next point of this brief we shall discuss the market facts and figures which would enter into consideration in the usual case of claimed monopolization through suppressing the competition of a competitor —some of which figures were cited by the district court as the basis of its finding of monopolization—and show that a claim of monopolization could not be sustained against Pan American even if Panagra were considered, as the

district court erroneously considered it, an entirely "independent entity" with no affiliation with Pan American. But it is of the utmost importance that the fact be kept in the front of mind throughout the consideration of this case that Panagra is not such an independent and unaffiliated company, but is an original venture of Pan American itself. We deem it clear in such a relationship that the subsidiary is not to be regarded as an outsider or competitor to a parent, and control over the subsidiary exercised by a parent is not to be regarded as pressure exerted on a competitor. That is why we say the ordinary tests of monopolization are not relevant or to be applied to the exercise of the normal rights of ownership of a parent in a subsidiary or of a joint venturer in a joint venture if the venture and ownership are themselves legal. The test of legality must be legality of the venture and ownership. If the venture and ownership do not offend against the antitrust laws, the exercise of the normal incidents of ownership cannot offend. We submit that this proposition is a truism against which the decision of the district court cannot stand.

Only a moment's reflection is required to realize that the kind of "negative control" enjoyed by each of the joint venturers in Panagra, which the court noted was designed to accord route protection to all the parties (Opinion, R. 5389), is inherent, normal and expected in any joint venture and is as legal as the venture is. No joint venture of two persons can be expanded beyond the scope originally contracted for unless both parties agree, and it would be an extremely novel thought, without any authority or legal basis, to suggest that one party must consent to an expansion because the other wishes to expand the venture at some future time,

or that there is anything illegal in the refusal of the reluctant party to expand. Joint venturers do not just go into business generally and leave it up in the air or at the will of either party to determine whether the business will be launched into one field or another at some future time. They specify the scope of their venture in the beginning, contract, contribute their capital and join their efforts for that defined purpose, and neither one party nor the other nor the public has any call upon the venture to depart from its defined business and become a different or expanded business. This is doubly true where the expansion in question would place the venture in competition with the established business of one of the venturers.

Let us take a simple illustrative example. Let us suppose that Jones owns a department store in Boston, doing business across state lines. He is planning to open a similar store in Providence. Smith is a well-known Providence merchant. Instead of Jones going it alone in Providence as he had planned, he decides to take Smith in with him in the Providence venture. They form a corporation to operate a department store in Providence under the names of "Jones & Smith, Inc." Each owns half the stock and names half the directors. Clearly there is no illegality in this—a form of conduct that has gone on for years before and since the Sherman Act without question of legality.

The Providence business succeeds. There is some competition between the two stores in sales to communities in southeastern Massachusetts, but this is a minor part of the business of either store. Years later, a site becomes available in Boston just across from Jones' store. Smith decides that he wants Jones & Smith, Inc. to buy the site and compete with Jones. Jones refuses and instructs

the directors named by him to vote "No." He says that Smith is entirely free to compete on his own account but not to use the assets of Jones & Smith, Inc., in which Jones has a half interest, for a purpose inimical to Jones' established business.

Would any court say that Jones is guilty of an illegal restraint of trade, or of any wrong, in maintaining his say as to what may be done with the assets of a corporation in which he is half-owner, and particularly in maintaining that they may not be turned against him?

The hypothetical case is entirely apt to the proposal made by Grace that Panagra enter into competition with the Pan American route between the United States and the Canal, except that the Panagra case is an even weaker case for a claim of illegality. In the Jones & Smith case, Jones would have been able to continue his own business in Boston in the face of the Jones & Smith, Inc. competition. Here, however, as we have previously pointed out, if Panagra were extended from the Canal to the United States—unless Pan American were similarly extended from the Canal down the west coast of South America—Panagra would obtain 8/9ths of all the business moving over the route and Pan American could not continue as an effective competitor. Surely a partner is not obliged thus to consent to the conversion of the partnership to his own undoing, and there can be no principle of antitrust law which suggests that he must.

Grace recognizes this fundamental as much as anyone would, and acknowledged it until the institution of this action prompted it to try out the ultimate in its bold attempts to take over Panagra and annex it to the Grace empire by arguing that Pan American's refusal to vote in favor of its joint venture's replacing Pan American on

reasoned analysis given, to reach or support the conclusion that in this case Pan American was obliged to surrender the normal and inherent right of the half owner of a corporation or joint venture to exercise his "negative control" with respect to an extension of the business beyond the bounds of the joint undertaking. The only suggested basis for the conclusion that Pan American was obliged to consent and cooperate in its partner's desire to change the "character" of the joint venture into that of a "competitive carrier" to Pan American is that Pan American was mistaken in regarding Panagra as "part of the Pan American system" (which it surely was and was so regarded by the CAB) because Panagra was not, in the court's view, a "subsidiary" of Pan American (Opinion, R. 5406).

Panagra is not a "subsidiary" in the court's view because Pan American is not a majority shareholder. The difference between owning 50% of the stock of Panagra and 51% is, in the court's opinion, a "decisive difference" (Opinion, R. 5406). How this 1% would make a difference in the "justification" for Pan American's vote of its stock interest in Panagra on the Grace proposal of a change in the scope of the joint venture is not indicated.

It is said that the "co-equal stockholder," Grace, never intended to be a mere investor in Panagra and never intended it to be a subsidiary of Pan American (Opinion, R. 5406). The relevance of this comment to the question of whether Pan American as a co-equal stockholder was entitled to vote its stock in opposition to Grace's proposal escapes us. The reminder seems in order again that this is not a stockholder's action. If there was any issue in the case of whether Pan American and its repre-

sentatives on the board of directors of Panagra were acting in accordance with an honest judgment as to the best interests of Panagra, the issue was taken out of the case, in the court's perception, by its holding, as stated in the opinion, that all of Pan American's "economic arguments," in the form of facts and figures which demonstrated that it would be contrary to Panagra's interests to extend its route to the United States (D. Ex. PS-114 to 129, R. 245, 4584-615), were "irrelevant" to the issues of this case (Opinion, R-5407). The district court took the position that Pan American, as a half owner of Panagra, was obliged to accede to the other half owner's request that the joint Company apply for a route which would be destructive of Pan American's own previously established route. In the court's view, this was an absolute obligation of Pan American's: *reason* was beside the point and all the economics, which may have fully supported Pan American's position and demonstrated that the proposed route was not in Panagra's interest, were not to be considered.

We would agree that the "economic arguments" are irrelevant, but only on the diametrically opposite premise from that on which the district court made its assumption of irrelevance. We would say that the arguments are irrelevant because we deem it clear that the half owner of a joint venture, in a position in which Pan American was in relation to Panagra, has the absolute right to say "no" to any proposal for the extension of the venture beyond its agreed purpose, particularly where the proposal is calculated to be destructive of its own business. But, certainly, if this is not true and there can be any question about the right of the joint venturer to say "no," the question must be one of reason in the "economic

arguments," and if the economic arguments are on the side of opposition to the proposal it cannot possibly be said that the opposition is illegal. We shall, therefore, briefly state the economic realities, fully recognized by the CAB, which show beyond question that Pan American was exercising sound judgment in Panagra's interest in opposing a Panagra application for a route to the United States and in proposing the through-flight arrangements.

The South American market is one of the poorest air transportation markets in the world (R. 248 ff.). The number of revenue passengers per route mile per day for Pan American's Latin American division and for Panagra are no more than on the highly subsidized local routes in the United States, where the carriers are not even required to operate in competition with any other air service (R. 248, 250; D. Ex. PS-101, R. 245, 4569). It cannot seriously be contended, therefore, that more competition in the Latin American market is to be desired. If, however, there is to be the competition between Panagra and Pan American of which Grace and the district court speak, the calculations must be based on the assumption that Pan American would get a route south of the Canal when Panagra gets a route north of the Canal. Otherwise, as has been made clear, there would be no competition but only the replacement of Pan American by Panagra. To ascertain what the economics of competition would be, test years of 1952 and 1957 were taken to observe what the financial results of such duplication of routes would have been had such routes existed in those years. The losses of Pan American and Panagra or their additional subsidy requirements would then have been in excess of $6,000,000 in 1952 and have been almost $7,000,000 in 1957 (D. Ex. PS-114, R. 245, 4584). These

economic facts make it clear that the through-flight arrangements were the only reasonable arrangements between the two carriers, to supply a joint service which was supportable as against two separate services which could not possibly be supported by the traffic available.

We need not rest on the cold figures, however. The appraisal of the CAB can be called up, for it has been given in connection with its current study of the Latin American route pattern, in the Board's Order Instituting Investigation in *United States-South American Route Case*, Docket 12895, Order No. E-17289, August 8, 1961. We quote (p. 2):

> "Prior to the decision in the *Latin American Case, supra,* Pan American and Panagra operated in competition with three foreign air carriers. Today, 19 South American foreign air carriers are authorized to serve the United States-South America market. There has also been an increase in service within South America by local carriers. Not only do these services rendered by non-U. S. flag carriers dilute the potential economic support for the services of the U. S. carriers, but also they bring into question the need for point-to-point duplication of such services. In this connection, we cannot be unmindful of the fact that the U. S. flag carriers' operations are marginal economically."

Then, reiterating that its view was the same as it was in 1954, the Board gave the reminder that: "As long ago as 1954, the Board publicly suggested that the available traffic in South America did not warrant continuation of three United States flag services."

The district court's statement (Opinion, R. 5407) that it must have been thought by the Government that in subsidizing Pan American and Panagra each would be given

equal opportunity to operate to the United States, is clearly contrary to fact. The opinion of the court elsewhere notes that all during the period of subsidy by mail contracts, that is, up to 1938, there was a "no-parallel" government policy (Opinion, R. 5409), and it is equally notable that all the subsidy paid since has been paid without paralleling by Pan American and Panagra and without any suggestion that the payment of subsidy was an invitation to paralleling. Instead, the CAB, as we have just noted, has strongly stated its policy against subsidy support for the paralleling of routes which would be involved in constituting Panagra an independent carrier.

We submit, therefore, that on every consideration of fact and law, and, indeed, upon all that is stated in the opinion of the district court down to its conclusion, Pan American was acting both reasonably and legally in the conduct of its part in Panagra affairs.

POINT III.

There is no support for the conclusion of the district court that Pan American has monopolized and attempted to monopolize air transportation between the United States and South America.

The opinion of the court is very loose in its statements of what Pan American's monopolization consisted of, and in its assimilation of distinctly different characterizations of Pan American's conduct and the consequences thereof. The notably different expressions of the factual finding upon which the legal conclusion of monopolization rests range from the statements that Pan American has "excluded" Panagra from the "market" (Opinion, R. 5408)

and has "prevented" Panagra's "extension" to the United States (Opinion, R. 5407), to statements that Pan American has blocked Panagra's "independent entry" into the United States (Opinion, R. 5405, 5406) "to its own terminal" (Opinion, R. 5398, 5404).

The important difference between these appraisals, which the court glides over, is obvious, and requires accurate notice and statement of what it is that Pan American's representatives on the board of directors of Panagra voted for and against, for it is their vote on the question of Panagra's applications to the CAB which has been found to constitute monopolization.

Pan American did not exclude Panagra from the market

Pan American's representatives on the Panagra board of directors voted in favor of, and long affirmatively urged, through-flight arrangements which would make the best possible combined use of Pan American and Panagra facilities, equipment and personnel in service between the United States and the west coast of South America. They voted against the establishment of an independent, unconnected, paralleling service of Panagra's between the United States and the Canal which would replace Pan American's service. These votes were properly in line with the fact that the two services were connecting and were designed and established as connecting services, with no thought on anybody's part that they would be disconnected and converted into paralleling, duplicatory and competitive services (*e.g.*, R. 216-217; D. Ex. P-96, R. 2520, 2522; P-108, R. 2558, 2559-561). The through-flight arrangement was eventually established after Grace had for years opposed and prevented its

establishment. While it can be said, therefore, that Panagra has not made "independent entry" into the United States to "its own terminal," it cannot be said that there has been any exclusion of Panagra from the market.

As the district court has treated the differently expressed incidents as being the same, it has not undertaken to meet or deal at all with the question of whether, assuming that Pan American was under some obligation to cooperate in a modernizing modification of the basic arrangement under which Pan American would fly from the United States to the Canal and Panagra would fly from the Canal down the west coast of South America, with a connection between the two services at the Canal, Pan American did not discharge its obligation and meet any legal requirement by its cooperation in the establishment of a through-flight service over both routes. As the court did not treat with this question, its holding of monopolization and attempted monopolization on the part of Pan American must rest upon the finding that Pan American has "excluded" Panagra from the "market." This is a conclusion which is indisputably contrary to the fact.

Proceeding from the two erroneous assumptions that Panagra is a "competitor" of Pan American and that it has been "excluded" from the market, the court reached the conclusion of monopolization on Pan American's part upon the basis of a few figures relating to shares of the market, not giving any consideration to steamship competition or any sufficient consideration to competition from foreign airlines. We maintain that Panagra, as the creation of Pan American, should not be considered a "competitor" of Pan American and that it may not be considered as "excluded" from the market. But accepting *arguendo* the assumptions of the district court, we shall

point out that a consideration of the relevant facts and figures would compel the conclusion that there is no monopolization or attempted monopolization by Pan American, even upon those assumptions.

Pan American is not "dominant" in the market

The district court found monopoly, without making the finding (essential thereto) that Pan American had the power to exclude competition or control prices (*American Tobacco Co.* v. *United States*, 328 U. S. 781 (1946); *United States* v. *Griffith*, 334 U. S. 100 (1948); *United States v. du Pont & Co.*, 351 U. S. 377 (1956)), on the basis of a finding that Pan American, *together* with Panagra, is dominant in the market. Taking figures which combine Panagra and Pan American participations in the market, the court has reached the strange result of finding Pan American guilty of monopolizing transportation between the United States and points in South America (the west coast) which it does not serve, while Panagra is found not to have monopolized transportation to those very points which it does serve. And the court has reached its conclusion on figures alone, without giving any consideration to key factors bearing on the existence of monopoly power, such as profits, government control of entry into the market, and the decreasing share of the market going to Pan American. Also omitted from proper consideration is the large and growing share of the market taken by foreign air carriers.

The court's discussion of the market occupies only four pages of the opinion (R. 5399-402). It defines the "area of effective competition" as "air transportation between the United States and South America, *particularly the west coast*" (italics ours). The first figures given are the

highly significant figures that in the last thirty years there has been a shift in the competitive positions of the steamship lines and airlines in the transportation of passengers between the United States and South America from the time when the airlines carried only 5% of the passengers to a time when they carry 80%, meaning that there has been and still is constant competition for passengers between the two types of service. Nevertheless, the court later held that there was no substantial competition between steamship lines and airlines into South America, and that figures as to sea traffic were not relevant or worthy of consideration in a look at the market or in determining the share of the market held by any airline (Opinion, R. 5403).

The figures which are cited as relied on to show Pan American dominance in the market between the United States and South America are that Pan American and Panagra *together* have participated in the movement of 75% to 88% of the passengers who used *United States flag airlines* during the period 1950-57 (Opinion, R. 5400). In the "particularly" relevant market, that is, between the United States and the west coast of South America, the only figures given are for *Panagra*, and it is stated that it carried between 79% and 86% of the traffic for this period (Opinion, R. 5401). The only figures given as to Pan American's own participation in any market are in traffic between the United States and eastern South America, a route as to which the district court found there was no question of Panagra's becoming a competitor of Pan American because of the territorial agreement. The one point of competition which the court found between Pan American and Panagra was Buenos Aires, which Panagra reaches from the west and Pan American

from the east (Opinion, R. 5401). The nature and extent of such competition is not explored, however, undoubtedly for the reason that there is no considerable competition between the two airlines for traffic into Buenos Aires, because the choice of routes for nearly all passengers is dictated by their choice of stops along the west coast or the east coast of South America, or possibly by their desire to go one way by one coast and return by the other coast (R. 176-183; D. Ex. P-425, R. 4258-259).

When the court comes to mention competition from foreign airlines, it finds that Pan American and Panagra *together* transported approximately 50% of the passengers travelling by air between the United States and South America during the period 1952 through 1957. Panagra's participation in total air traffic between the United States and western South America is found to be down to 50% in 1957 and Pan American's participation in total air traffic between the United States and eastern South America is found to be two-fifths for the period 1952-1957 (Opinion, R. 5401-402).

The court failed to present any realistic picture of the competition of *nineteen foreign airlines* operating between the United States and South America or Panama (*United States-South American Route Case*, Docket 12895, Order No. E-17289, August 8, 1961). Most of these airlines have commenced operating since 1950 and their share of the market is increasing steadily. The foreign airlines are constantly improving their service with more frequent and faster flights. As a consequence Pan American's and Panagra's share of the market has been declining drastically since 1950. Between the United States and South America, Pan American and Panagra had 73.1%

of the market in 1950; in 1957 they had only 47.3% (P. Ex. GS-32, R. 1388; GS-38, R. 1394). Between the United States and the west coast of South America, the two airlines combined had 84.5% of the market in 1950 and only 53.2% in 1957 (P. Ex. GS-45, R. 1401; GS-39, R. 1395). Between the United States and Buenos Aires, Pan American had 40.5% in 1950 and 34.7% in 1957 (P. Ex. GS-59, R. 1415; GS-53, R. 1409). Foreigners now travel principally by foreign airlines, and 24% of United States citizens travelling between the United States and South America now use foreign airlines (D. Ex. PS-112, R. 245, 4582).

The CAB has recently delivered comments on the development of foreign airline competition in South America which give a perspective on competition there that is much more realistic than the district court's virtual ignoring of the development. The CAB noted that at the time of its decision in the *Latin American* case in 1946 (*Latin American Air Service*, 6 CAB 857 (1946)), when Braniff was certificated, Pan American and Panagra operated in competition with only three foreign air carriers. Today, however, it is stated that "19 South American foreign air carriers are authorized to serve the United States-South American market," and that there has also been an increase in service within South America by local carriers. These services, it is noted, "dilute the potential economic support for the services of the United States carriers" and "bring into question the need for point-to-point duplication of such services." (*United States-South American Route Case*, Docket 12895, Order No. E-17289, August 8, 1961.)

The ever-increasing penetration of the market by foreign flag carriers demonstrates that they compete interchangeably with United States flag carriers for the transportation of air passengers between the United States

and South America. Therefore, the foreign carriers must be considered in the same market. *United States* v. *duPont & Co.*, 351 U. S. 377 (1956); *Times Picayune Publishing Co.* v. *United States*, 345 U. S. 594 (1953). The district court's failure to pay due attention to the competition provided by foreign airlines makes the court's presentation and appraisal of the competitive picture inadequate and misleading.

The figures unquestionably show that Pan American is *not* dominant in any of the markets under consideration. While there are no absolute standards in making a determination of dominance, decisions of this Court have established guidelines from which it is apparent that Pan American does not come within the criteria of dominance. Guidelines established by this Court and other courts indicate that considerably more than a 50% share of a market is necessary to establish dominance. Indeed, a two-thirds share is generally recognized as necessary to permit the trier of the facts to make a finding of monopolization. *United States* v. *duPont*, 351 U. S. 377 (1956); *United States* v. *Columbia Steel Co.*, 334 U. S. 495 (1948); *American Tobacco Co.* v. *United States*, 328 U. S. 781 (1946); *United States* v. *Aluminum Co. of America*, 91 F. Supp. 333 (S.D.N.Y. 1950). Pan American alone does not have more than 44% of any market, i.e., the east coast of South America market (P. Ex. GS-46, R. 1402) and Pan American and Panagra combined have only 50% of the United States-South American market. This, we submit, falls far short of establishing the dominance required for a finding of monopolization.

The finding of dominance here is refuted by more than a lack of a dominant share of the market. It is refuted by the very significant fact that Pan American's share of the market has been declining continuously and drastically over the past ten years. Such a decline in a share of the

market was commented on in *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 533 (1948), where the Court rejected a charge of attempted monopolization:

> "United States Steel, despite its large sales, many acquisitions and leading position in the industry, has declined in the proportion of rolled steel products it manufactures in comparison with its early days. In 1901 it produced 50.1%; in 1911, 45.7%; in 1946, 30.4%. For the period 1937-1946 it produced 33.2%."

In addition, Pan American's "profit" position hardly indicates monopolization. *Cf. American Tobacco Co.* v. *United States*, 328 U. S. 781 (1946). The rate of return has not only been relatively low PAA's Latin American Division had an average return of 2.9% on total investment for the period 1947-1957, with 3.8% and 0.6% in 1956 and 1957, respectively (D. Ex. PS-108, R. 245, 4577)—but an operating loss was sustained for four of the nine years between 1950 and 1958 (D. Ex. PS-14, R. 173, 4551). The district court failed to comment on this fact in discussing monopolization and necessarily failed to point to any case that found monopolization when a defendant had incurred such losses.

Pan American does not have the power to exclude competition from the market

The essential foundation of a finding of monopolization on the part of Pan American would be a finding that Pan American had the power to exclude competition. There is no finding, however, that Pan American had the power to exclude competitors or to control prices. The finding is only that Pan American had the power to prevent a single potential competitor, Panagra, from applying for

a route of its own from the United States to the Canal Zone. The court held that this power alone constituted monopoly power and hence its exercise was a violation of Section 2 of the Sherman Act.

We submit that the holding is clearly untenable for two reasons: (1) Pan American did not have the power attributed to it of excluding Panagra from the market, and (2) such a limited power of excluding a single competitor, assuming that Panagra was a "competitor" and that the power of exclusion existed, would not constitute monopoly power in an industry where entry into the market and the level of prices are entirely matters of Government control.

Pan American did not have the power attributed to it by the district court of preventing Panagra's application to the CAB for a route to the United States, in view of the court's ruling in *W. R. Grace & Co.* v. *United States*, 154 F.2d 271 (2nd Cir. 1946), *writ of cert. dismissed for mootness*, 332 U. S. 827 (1947). In that case, considering the question of whether or not Grace could apply for Panagra's own route despite the contrary vote of the Pan American representatives on the Panagra board of directors, the court held that Grace could make the application in Panagra's name and the application could be considered a Panagra application if Grace could prove that Pan American's opposition was the result of "illegality and fraud" on its part.

Thus, if Pan American were acting in the matter without proper regard for Panagra's interests and inconsistently with antitrust principles, Grace could have made a showing of the impropriety in Pan American's conduct and have prosecuted the application in the name of Panagra. This was the Grace privilege and oportunity as long as fifteen years ago. With the strict qualification

thus imposed on the maintenance of Pan American's position, making the maintenance of the position dependent upon its legality, it cannot be said that Pan American possessed the power of preventing Panagra's extension.

Furthermore, even if it be assumed that Pan American had the power to exclude Panagra from the market and it is assumed that Panagra is a "competitor", such power to exclude a single competitor is insufficient to support a Section 2 violation where the exclusion is not an exercise of monopoly power. See *Lorain Journal Co.* v. *United States*, 342 U. S. 143 (1951); *Gamco, Inc.* v. *Providence Fruit & Produce Bldg., Inc.*, 194 F. 2d 484 (1st Cir.), *cert. denied*, 344 U. S. 817 (1952); *United States* v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn. 1945). In *Mackey* v. *Sears, Roebuck & Co.*, 237 F. 2d 869 (7th Cir. 1956), *appeal dismissed*, 355 U. S. 865 (1957), the court ruled that the destruction of a single competitor, although sufficient to support a cause of action for malicious destruction of a business, did not violate Section 2 because Sears neither had nor thereby achieved such dominance in the market as to constitute monopoly power. In all of the cases in which the power to exclude a single competitor was held to have violated Section 2, the defendant had overwhelming dominance in the market and its power to exclude resulted from that dominance. Pan American's power of exclusion of Panagra, if assumed, was not a power in any way related to its position in the market but existed only in internal corporate arrangements of Panagra and represented only the inherent right of Pan American as a stockholder in Panagra. There is not even a suggestion in the opinion of the district court that Pan American used its market position in any way to exclude Panagra from the market.

Even assuming that the exercise of Pan American's right to vote its stock interest in Panagra on the subject

of whether an application should be made and what application should be made to the CAB to extend Panagra's service to the United States amounted to an exclusion of a potential competitor from the market, still such exclusion would not amount to monopolization or attempted monopolization or constitute an exercise of monopoly power because the power of controlling entry into the market and determining the amount of competition rests solely with the President of the United States and the CAB under Sections 401 and 801 of the Civil Aeronautics Act.* It should be noted that in 1946 five carriers applied for routes paralleling the routes of Pan American and Panagra in South America. *Latin American Air Service*, 6 CAB 857, 912 (1946). With the opportunity which the CAB then had to determine the route pattern, carrier participation and degree of competition, the members of the CAB divided evenly on whether there should be any additional competition in air transportation between the United States and Latin America, and the President decided that the only desirable competition would be the addition of one other carrier and Braniff was certificated to operate in the area.

There can be no question, therefore, that the power rests in governmental authority and has been exercised by governmental authority to determine the nature and extent of competition in the market under consideration and that Pan American's vote of its stock interest in Panagra on the subject of any route application by Panagra has not been an exercise of monopoly power.

This Court in *United States* v. *duPont & Co.*, 351 U. S.

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* The Civil Aeronautics Act was substantially reenacted by the Federal Aviation Act of 1958, 49 U.S.C. 1301, *et seq.* As far as relevant to this case the provisions are identical, and reference will be made only to the Civil Aeronautics Act in accordance with the form of reference used by the district court (Opinion, R. 5368, n. 4).

377 (1956), commented upon the significance to a question of monopoly power of the fact of whether a regulated or unregulated industry is involved, citing the air transportation industry as an example of "market entry" being "carefully regulated" (351 U. S. at 388, n. 14).

The district court did not discuss the question of whether or not Pan American had the power to fix prices, an important consideration in the determination of the existence of monopoly power. It can be categorically stated that Pan American had no such power. The fact is that fares and rates in international air transportation are recommended by conference procedure among all the airlines in the International Air Transport Association ("IATA"), and the establishment of fares and rates is dependent upon approval by the governments of the countries involved, specifically as to the United States by the CAB (Civil Aeronautics Act, section 412, 49 U.S.C. 1382 (1961)). The Articles of Association of IATA were approved by the CAB in 1945 (D. Ex. P-303, R. 3220) and the conference procedure thereunder approved in 1946 (D. Ex. P-304, R. 3222; *IATA Traffic Conference Resolution*, 6 CAB 639 (1946)). This procedure and the participation of the CAB in rate making make it apparent that Pan American does not have monopoly power to fix prices (See also D. Ex. P-305, R. 3224; P-306, R. 3231; P-307, R. 3235).

The key finding of monopolization of air transportation on the United States-Canal Zone sector is wholly lacking in support

While the district court couched its finding of monopolization in the broad terms of a monopolization of the "United States-South American sector" of air transportation, it is apparent that this finding is based entirely on what it terms the "more complete monopoly" in the "more

limited market" of the "United States-Canal Zone sector" (Opinion, R. 5407). Here is the key to the whole finding of monopolization, for it is in this sector alone that Pan American is found to have "excluded" Panagra, and if the finding of monopolization in this sector is not sustained the decision cannot stand in any respect.

The fact is that there is no support whatever in the opinion of the district court or in the evidence for a finding of monopolization in the United States-Canal Zone sector, and that the district court decision rests upon a legal premise which is plainly contrary to law—the fallacious premise that the transportation in question would be deemed "overseas" transportation as distinguished from "foreign" transportation and "as such, would be reserved exclusively to United States flag carriers" (Opinion, R. 5407). With this premise, it seems that the court assumed that there was no need to ascertain or consider any facts as to the amount of traffic involved, the carriers serving the route and their respective shares in the market. Not a fact relating to these matters is mentioned in the opinion, and indeed there is no evidence in the record as to the amount of traffic or division of the traffic among the airlines serving the market. It does appear in the record, however, that two-thirds of the traffic over this route is through traffic, so that nineteen foreign carriers are in competition with two American carriers for the bulk of the traffic. As for the local traffic, the court was mistaken in its understanding that foreign carriers do not participate.

Since 1949 there has been no airport in the Canal Zone serving commercial air transportation to and from the United States or to and from South America (See D. Ex. P-409, R. 3657). The airport has been located in Panama, a sovereign country (*Aviation Agreement Between the United States of America and the Republic of Panama*,

dated March 31, 1949). Under these circumstances, as a practical matter, there is no "overseas" transportation between the United States and the Canal Zone area, all the transportation is "foreign" transportation and, as such, open to foreign flag carriers equally with American flag carriers. As the record discloses, although shares of the market are not shown, eight airlines operate between the United States and Panama, six of which operate between New York or Miami and Panama (D. Ex. WRG-168, R. 5275*; D. Ex. P-409, R. 3657).

No "specific intent" to monopolize or "dangerous probability" of monopolization has been shown

The district court has found that Pan American monopolized and attempted to monopolize air transportation between the United States and South America, without distinguishing between the two. We have covered any possible claim of monopolization. We shall now show that the essentials of a claim of attempted monopolization are also absent.

It has often been stated that "a specific intent to destroy competition or build monopoly is essential" to a finding of an "attempt to monopolize." *Times-Picayune Publishing Co.* v. *United States,* 345 U. S. 594, 626 (1953). See *Swift & Co.* v. *United States,* 196 U. S. 375, 396 (1905); *American Tobacco Co.* v. *United States,* 328 U. S. 781, 814 (1946); *United States* v. *Griffith,* 334 U. S. 100, 105 (1948); *Report of the Atty-Gen's Comm. to Study the Antitrust Laws* 61 (1955).

Likewise, to complement the "specific intent" in the required demonstration of a definite and serious attempt

* W. R. Grace Exhibits WRG-1 through WRG-173 were introduced into evidence at page 625 of the original transcript, a portion of the transcript which was omitted from the printed record. Citations hereafter made to WRG-1 through WRG-173 will omit any reference to the point at which they were introduced.

at monopolization, it is required that there be a showing of "dangerous probability" of monopolization in the attempt. *American Tobacco Co.* v. *United States, supra,* at 785. Even the willful destruction of a competitor is no evidence of the offense of attempted monopolization, without the specific purpose of monopolizing trade and the dangerous probability of the realization of the purpose. *Mackey* v. *Sears, Roebuck & Co.*, 237 F.2d 869 (7th Cir. 1956), *appeal dismissed,* 355 U. S. 865 (1957).

We believe that it is unnecessary to dwell upon the lack of any showing or evidence of a specific intent to monopolize or a dangerous probability of monopolization by Pan American. Perhaps it can be said that a finding of "dangerous probability" is implicit in the court's finding of monopolization, but there is no mention of "dangerous probability" in the opinion of the court and certainly no finding, explicit or implicit, of "specific intent" to monopolize. Indeed, the concept of "specific intent" is not considered in the opinion. Equally plainly, we submit, there was no specific intent to monopolize or dangerous probability of monopolization in Pan American's actions which the court found to be an antitrust offense.

"Specific intent" means something different and more than intending to do what is done. It means doing it with a "plan" or "scheme" for gaining monopoly power. *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 532 (1948); *United States* v. *Aluminum Co. of America*, 148 F.2d 416, 431-432 (2d Cir. 1945); *Fargo Glass & Paint Co.* v. *Globe American Corporation*, 201 F. 2d 534 (7th Cir.), *cert. denied*, 345 U. S. 942 (1953); *Bender* v. *Hearst Corp.*, 152 F. Supp. 569, 578 (D. Conn. 1957), *aff'd*, 263 F. 2d 360 (2d Cir. 1959); *Report of the Atty-Gen's Comm. to Study the Antitrust Laws* 62 (1955).

Pan American here did no more than vote its stock interest in Panagra as it was entitled to do in the exer-

cise of its judgment as to what was right and proper. Certainly, such a normal exercise of the inherent right of a joint owner of a corporation or a joint venturer cannot be considered a plan or scheme to monopolize. The opinion of the district court does not suggest any such scheme on Pan American's part, but finds only that Pan American mistakenly regarded Panagra as a subsidiary, and that its votes within the corporate frame of its own jointly owned company were motivated by its desire to participate in the profits to be made by Panagra's flying over the Pan American route (Opinion, R. 5405-406). This desire to profit from the use of one's franchise can hardly be condemned as an intent or attempt to monopolize.

There is abundant legal authority that good faith action pursuant to an apparent legal right is a complete negation of the element of specific intent essential to an attempt to monopolize. It seems firmly established, for example, that bad faith in the prosecution of alleged patent and trade mark infringements is an essential element in a charge of an attempt to monopolize thereby. See *Kellogg Co.* v. *National Biscuit Co.*, 71 F.2d 662, 664, 665 (2d Cir. 1939); *Kobe, Inc.* v. *Dempsey Pump Co.*, 198 F.2d 416, 424, 425 (10th Cir.), *cert. denied*, 344 U. S. 837 (1952); *Virtue* v. *Creamery Package Mfg. Co.*, 179 Fed. 115 (8th Cir. 1910), *aff'd*, 227 U. S. 8 (1913); *Cape Cod Food Products, Inc.* v. *National Cranberry Ass'n.*, 119 F. Supp. 900 (D. Mass. 1954); *American TCP Corp.* v. *Shell Oil Co.*, 127 F. Supp. 208, 210 (S.D.N.Y. 1955). See also Smith, *Attempt to Monopolize: Its Elements and Their Definition*, 27 GEO. WASH. L. REV. 227, 233 (1958-1959).

There is no suggestion in the opinion of the district court that Pan American acted in bad faith in the vote of its stock interest in Panagra on the subject of the

application which might be made by Panagra for a route to the United States. We submit that it is clear beyond dispute that Pan American was acting at least pursuant to its apparent legal rights. Indeed, it was acting with the reason of compelling economic arguments. What the opinion of the district court really comes down to is that Pan American was mistaken. Even if that assumption be made, we submit that the mistake cannot be blown up into an intent and attempt to monopolize.

It is clear, therefore, that there is no basis for the conclusion of the district court that there has been monopolization or attempted monopolization by Pan American in air transportation between the United States and the Canal Zone and hence monopolization or attempted monopolization of air transportation between the United States and South America.

POINT IV

The Civil Aeronautics Board had primary jurisdiction of the subject matter of the action and the court should not have entertained the action.

The doctrine of primary jurisdiction has been well established ever since *Texas & Pacific Ry.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426 (1907). This case has been followed in *Baltimore & Ohio R.R.* v. *United States ex rel. Pitcairn Coal Co.*, 215 U. S. 481 (1910); *Texas & Pacific Ry.* v. *American Tie & Timber Co.*, 234 U. S. 138 (1914); *United States Navigation Co.* v. *Cunard Steamship Co.*, 284 U. S. 474 (1932); *Far East Conference* v. *United States*, 342 U. S. 570 (1952) and *United States* v. *Western Pacific R.R.*, 352 U. S. 59 (1956).

The doctrine of primary jurisdiction applies with particular force to this case. The underlying problems and

and Pan American but the route south of the Canal is subject to their agreement that Pan American and Panagra are not to parallel each other's routes. By so dealing with the routes which are entirely within the jurisdiction of the Board, the court has seriously interfered with the jurisdiction of the Board to the point of usurping its jurisdiction and preventing it from effectuating national policy.

Whatever justification might have existed to entertain the action and grant the relief requested by the Government, which would have given the CAB that freedom of exercise of its jurisdiction which it desired, ended when the court concluded that the complaint was not sustained, and certainly then the court should have dismissed the complaint and not have undertaken to do many things not requested and diametrically opposed to what was requested, resulting in the most serious compromise of the Board. While, at worst, the consequence is the defeat of national policy as to the number of American flag carriers which should exist in Latin America, there are other very serious consequences in the making of rulings with respect to routes: one ruling as to the route north of the Canal and another ruling as to the route south of the Canal, when any ruling with respect to either route can be made only in consideration of the necessary relation between the two routes and in a consistent manner by the agency which is vested with the responsibility for the route pattern, the allocation of routes and certification of carriers.

We are not presently advised as to what the Government's position may now be in respect to the primary jurisdiction of the Board and the district court's infringement upon and impairment of that jurisdiction. The soundness of our position with respect to the primary jurisdiction of the Board is not affected, however, by the

Government's attitude. The Board should neither be allowed nor required to yield any part of its jurisdiction to the court. The exercise by the Board of its primary jurisdiction should be assured, and only if there is a need for the Board to go to court after its jurisdiction has been exercised should it be allowable for the court to entertain an action. *Trans Pacific Airlines* v. *Hawaiian Airlines*, 174 F. 2d 63 (9th Cir. 1949).

The district court gave two reasons for its decision that the primary jurisdiction doctrine is inapplicable to this case (R. 5419-420): (1) that the Government seeks a remedy which the CAB may not give, and (2) that the complaint covers matters existing before 1938 over which the CAB has no jurisdiction. Neither reason is persuasive.

After this Court's decision in *General American Tank Car Corp.* v. *El Dorado Terminal Co.*, 308 U. S. 422 (1940) and, more recently, in *United States* v. *Western Pacific R.R.*, 352 U. S. 59 (1956), it is plainly incorrect to deny primary jurisdiction on the ground that the administrative agency involved cannot provide the exact remedy sought. In both *El Dorado* and *Western Pacific* this Court held the primary jurisdiction rule applicable even though the agency was unable to grant the exact relief requested. The relevant inquiry is not whether the administrative body has power to grant the relief, but whether some issue involved in the litigation has been designated by Congress to be "within the special competence of an administrative body." *United States* v. *Western Pacific R.R.*, 352 U. S. 59, 64 (1956). See 3 Davis, *Administrative Law Treatise* § 19.07 (1958).

The antitrust area is not outside of the CAB's jurisdiction as the district court seemed to think. Two cases brought against airline associations for violation of the

antitrust laws show that the agency's inability to grant a particular remedy does not proscribe application of the doctrine of primary jurisdiction. In *S.S.W., Inc.* v. *Air Transport Ass'n.*, 191 F. 2d 658 (D.C. Cir. 1951), *cert. denied*, 343 U. S. 955 (1953), and *Apgar Travel Agency, Inc.* v. *International Air Transport Ass'n.*, 107 F. Supp. 706 (S.D.N.Y. 1952) plaintiffs, charging the defendants with conspiracy and monopolization, asked for injunctive relief and treble damages. Notwithstanding the inability of the CAB to grant damages, both courts, finding the primary jurisdiction doctrine otherwise applicable, referred the cases to the CAB.*

As this Court noted in *United States* v. *Radio Corporation of America*, 358 U. S. 334, 346, 350-351 (1959), a "pervasive regulatory scheme" of a regulated industry indicates a Congressional intention to remove the industry from the general antitrust norms of the Sherman Act. We submit that this is clearly so in the letter and spirit of the Civil Aeronautics Act, with its many provisions which leave competition in the industry to the discretion of the CAB. It follows that the existence and exercise of the primary jurisdiction of the Board in relation to antitrust complaints must be correspondingly broad and responsive to the responsibility vested in the Board. This is so clear that it has been suggested that the doctrine of primary jurisdiction should always be applied in antitrust

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* In *Slick Airways, Inc.* v. *American Airlines, Inc.*, 107 F. Supp. 199 (D.N.J. 1951), *appeal dismissed*, 204 F. 2d 230 (3d Cir.), *cert. denied*, 346 U. S. 806 (1953), the court—faced with allegations similar to *S.S.W.*—refused to follow *S.S.W.* and apply primary jurisdiction. However, the plaintiff had withdrawn its request for an injunction and sought only damages. Distinguishing *Slick* from *S.S.W.* and *Apgar* is the fact that in *Slick* the CAB had already had hearings and ordered prospective relief with respect to the principal alleged violations. Thus the court could conclude that "there do not presently appear administrative problems which must be committed to the Board for its determination." *id.* at 216.

actions brought against an airline within the CAB's jurisdiction. See Hale & Hale, *Competition or Control IV: Air Carriers*, 109 U. Pa. L. Rev. 311, 358-360 (1961).

We submit that there can be no question about the applicability of these principles and the doctrine of primary jurisdiction to this case in the light of what the Court of Appeals for the Second Circuit said of the Board's jurisdiction over the subject matter of the district court's decision and decree in this action. *W. R. Grace & Co. v. CAB*, 154 F. 2d 271 (2d Cir. 1946) at 282. In stating the reasons for its conclusion that the CAB had the jurisdiction to determine, and was the proper agency to determine, whether Pan American's opposition to Panagra's application for an extension to the United States was due to "illegality and fraud"—and why the matter should not become the subject of a court suit—the court said:

> "Both those issues demand the same specialized acquaintance with commercial aviation and its ramifications as a decision upon the public convenience and necessity of the extension itself. No court, state or federal, would have that acquaintance; by hypothesis the Board does have it, and the Board alone."

The second reason given by the district court for denying the Board's primary jurisdiction is also unsupportable. There is no suggestion in the opinion as to what the "matters" are that existed prior to the creation of the CAB and over which the CAB would have no jurisdiction. Without some inkling as to what the court had in mind, we cannot think of anything in the pre-1938 history of Panagra which would place current conditions of the company outside of the cognizance of the CAB. The CAB

United States (D. Ex. P-420, R. 3916, 3971-972, 3983). He said that the two agreements definitely settled the deadlock, which had been the subject of CAB inquiry in Docket 779. He stated (D. Ex. P-420, R. 3916, 4047):

> "• • • the issue in 779 was whether or not Panagra should be extended to the United States. That was the deadlock which led to that proceeding. That controversy has been settled by this arrangement under which through flight is provided under the terms of this contract."

When questioned as to whether that implied that the original extension was no longer contemplated and was not to be sought, Mr. Roig replied in the affirmative (D. Ex. P-420, R. 3916, 4048).

Edward Hickey, an Antitrust Division Attorney, put to Roig the question and got the answer which emphasized the fact of the understanding all around that Pan American was no longer under any call from anybody to consent to an independent route to the United States for Panagra (D. Ex. P-420, R. 3916, 4109):

> "Q. Referring back to my question, *Mr. Roig, isn't it implicit then in this provision that except for default of certificate, Pan American is under no obligation to consent to Panagra's making application for an independent franchise?* **A. *That is correct.***" (Italics supplied.)

Henry J. Friendly, Vice President and General Counsel of Pan American, was very precise in his testimony—the agreements settled the dispute as to whether Panagra should be permitted to apply for an independent entry to the United States; such an application was not foreclosed, but it could come only by vote of Panagra's board of directors and it was not foreseeable that Pan American

would change its view and that any such application would be made by Panagra.*

* Friendly testified under examination by counsel for Braniff as follows (D. Ex. P-421, R. 4142, 4175):

"Q. Now, Mr. Friendly, do you understand, as a result of contracts A and B, that Panagra is prevented from applying for a route to the United States in its own name? A. No.

"Q. There is no informal understanding on that basis. A. Well, my understanding is exactly as Mr. Roig has testified: that there is no express provision in the agreement on the subject; there is nothing whatever in the agreement that would prevent *Panagra, upon proper action of the Board of Directors,* from making an application. *There is an understanding which you can say is implicit in the agreement, or which you can say is a result of the express provisions in regard to the dismissal of litigation, that Grace and Company will not agitate for such an extension.*" (Italics supplied.)

Under examination by Mr. McDowell, an attorney for the Antitrust Division, Friendly testified (D. Ex. P-421, R. 4142, 4185-186):

"Q. Mr. Friendly, in response to a question by Mr. Schneider on cross examination, I understood you to say that there was nothing in the agreement involved in this proceeding to prevent Panagra from applying for an independent franchise to enter into the United States; is that correct? A. That is right.

"Q. I would like to know whether there is any understanding outside of the agreement now involved in this proceeding which would so prevent Panagra from applying? A. There is no understanding whatever in regard to Panagra's applying or not applying. *Panagra can apply at any time if its board of directors so authorized.*

"Q. *It is understood that this contract, and the arrangements contemplated under it for charter operation into the United States will settle the dispute which has existed for sometime between Pan American and Grace as to whether Panagra should be permitted to apply for an independent entry to the United States?* A. *Yes, I should say so.*

"Q. And as part of the settlement of that dispute, is it understood between the parties that Panagra will not, so long as this contract is in effect, apply for such independent entry? A. No. I don't want to seem unduly technical, Mr. McDowell, but I want to be perfectly clear about this. There is nothing in these agreements that limits the ability of Panagra as a corporation to make such an application.

"Of course, Panagra can make such an application only by authorization of the Board of Directors. Pan American's views

their ultimate resolution are necessarily for CAB determination. The basic questions—the route pattern and integration of Pan American and Panagra into the route pattern, including dealing with any problems presented by Panagra's ownership—are matters within the primary and exclusive jurisdiction of the CAB. The injection of the court into these matters can only result, as it has resulted, in a prejudice to the exercise of the Board's jurisdiction and prevention of its effectuation of national policy in air transportation.

It may be that if this action had resulted either in sustaining or dismissing the complaint, no harm would have been done to the CAB's jurisdiction and functioning. The Board could readily deal with a Panagra with both Pan American and Grace in or out of ownership. But a court result which would put Pan American out and keep Grace in would create a situation with which the Board cannot deal with requisite administrative authority and latitude or consistently with declared national policy. Grace would be cemented in control of a one-half interest. The other half interest coming into unknown hands would perpetuate the divided and equal ownership with its attendant problems, but worse than any consequence flowing from the joint ownership of Pan American and Grace would be the consequence of Panagra's becoming a third American flag carrier into Latin America, which would be the worst thing for Panagra and the last thing which the Board wants and national policy requires.

The result reached by the district court is thus a demonstration that the action should not have been entertained, or at least that the court should not have undertaken to enter a decree so at variance with the purpose for which the court's jurisdiction was invoked and the

relief which was requested. There certainly was no need, occasion or justification for the court's entertaining an issue not embraced within the complaint, interjected by one defendant against the other, and rendering "relief" not compatible with the action or any jurisdiction which the court might properly or usefully exercise.

With due regard to the fact that the CAB requested the institution of the action, and defined the complaint and remedy, the court's recasting of the parties and issues and reaching of a result which is at odds with the Board's objective in bringing the action makes the entertainment of the action and exercise of the court's jurisdiction intolerable. It cannot have the excuse suggested by the court that the "remedy" requested does not lie within the power of the Board. The Board had the jurisdiction to hear and pass upon any complaint which Grace might make against Pan American's actions with respect to an application by Panagra for a route to the United States, including any claim of an antitrust violation, and to fashion an appropriate remedy. *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946), *writ of cert. dismissed for mootness*, 332 U. S. 827 (1947).* Such a proceeding was instituted before the Board by Grace in 1957 and is presently before the Board (R. 294-295). If, after such a proceeding was heard and the Board's determination made, the Board found occasion to call upon the court in implementation of the Board's jurisdiction and determination,

* Our statement here with respect to the jurisdiction of the Board in any such proceeding is upon the assumption that the matter of any making of an application by or in the name of Panagra is open to question. As we shall show in Point V of this brief, the question is closed by the settlement made and approved by the CAB in the through-flight agreements, which included the dismissal of the appeal to this court from the Second Circuit's decision on the ground that the appeal was moot, 332 U. S. 827.

it might well be that the court would have the jurisdiction to respond. But without a determination by the Board in such a proceeding, the court had no jurisdiction, or should not have exercised any jurisdiction, over a claim of alleged unilateral violation of the antitrust laws by Pan American in its action with respect to an application to the CAB, particularly, as the claim was not asserted by the Government or CAB, but only by a co-defendant with no standing to assert such a claim in this action.

The result reached in this case is a demonstration in still another way of the impropriety of the court's taking jurisdiction and undertaking to deal with a subject with so many ramifications which cannot be handled except in the administrative frame. The opinion of the court itself shows the essential relationship between the route north of the Canal and the route south of the Canal in air service between the United States and the west coast of South America (*e.g.* Opinion, R. 5401, 5405). Obviously, the two sections cannot be dealt with separately and no disposition can be made of one without a corresponding disposition of the other at the same time and in a related way. Most obviously, one body cannot decide the affiliation of one route and another body decide the affiliation of the other. But, as a result of the assumption of jurisdiction by the court in this case and of the decision rendered by the court, the two sections of the air service have been separated and the court has purported to leave it to the CAB to decide what shall be done about the route north of the Canal, while the court has assumed to encumber the route south of the Canal with the adjudication that it is subject to a valid agreement of non-paralleling between Pan American and Panagra.

The impossible situation which the court has thus created is apparent from a crucial fact of which the court

was conscious but not duly appreciative. That fact is, as has been previously noted, that if Panagra was given a route between the United States and the Canal and thereby gained a through route of its own from the United States down the west coast of South America, and Pan American was dead-ended at the Canal, Panagra would get all the through traffic and nearly all the local traffic on the route between the United States and the Canal, so there would be practically no traffic moving over the Pan American route, with the consequence that it could not be maintained. In this setup there would be no introduction of competition between Pan American and Panagra, which is the mirage of the district court's opinion, but there would be a replacement of Pan American by Panagra. That is, unless Pan American were correspondingly given a route from the Canal down the west coast of South America in order that it would have a through service competitive with Panagra. In short, competition between Pan American and Panagra between the United States and the west coast of South America, which is presumed to be the vision, could become a reality only if both carriers had paralleling routes all the way. This, of course is not the vision of Grace, whose aim is not competition with Pan American but the elimination of Pan American from the west coast service, an elimination which would become completely effective by the adoption of its proposal that Panagra have a route of its own between the United States and the Canal, but that Panagra remain free from the competition of any route of Pan American from the Canal down the west coast of South America. Unfortunately and wholly unjustifiably, the district court has ventured to make the disposition which Grace desires by its pronouncement that the route north of the Canal is free of any engagement between Grace

application except in situations which have never occurred. The refusal of Pan American to support such an application has thus been approved by the CAB and immunized from a charge of an antitrust violation.

There is no question of fact in this connection and we do not see how there can be any question of legal effect. The pertinent facts can be briefly stated.

The agreement between Pan American and Panagra, known as the Through Flight Agreement (D. Ex. P-2, R. 1859), reciting that the parties "desire to settle outstanding differences," provided for flights by Panagra planes manned by Panagra crews over Pan American's route from Miami to the Canal. Panagra could terminate the agreement only upon a default in performance by Pan American. Provision was specifically made as to the defined circumstances under which "Pan American will consent to Panagra's making application" for routes held by Pan American. These circumstances were a transfer or abandonment of a route by Pan American. Equally plainly as a corollary, Pan American was under no obligation, except as specified, to consent to a route application by Panagra, but Panagra was under obligation to continue for the term of the agreement with through flight arrangements instead of a route of its own.

The agreement between Pan American and Grace, known as the Parent Company Agreement (P. Ex. G-267, R. 892), made in connection with the Through Flight Agreement, was a joint undertaking of the owners of Panagra to use their best efforts to facilitate the carrying out of the Through Flight Agreement, and each agreed "not to exercise its rights as owner of voting shares in such a manner as to interfere with or impede the performance of said contract in accordance with its

terms." The meaning of this commitment under the circumstances is unmistakable. Any attempt by Grace to use its voting power to cause Panagra to apply for a route included in the through flight arrangements would necessarily "interfere with or impede the performance" of the Through Flight Agreement. The agreement provided, as final manifestation of the definitive character of the disposition of the whole controversy relating to Panagra's routing to the United States, that when the agreement was approved by the CAB the parties would apply for the dismissal of all legal proceedings relating to the controversy, including the appeal pending in this Court from the decision of the Court of Appeals of the Second Circuit. This Court accordingly dismissed the writ of certiorari "on the ground that the cause is moot" (332 U. S. 827 (1947)).

The CAB held an extensive hearing on the application of Pan American, Panagra and Grace for approval of the agreements. The testimony and briefs presented made it crystal clear that the parties had settled their dispute over any route application by Panagra, that the through flight arrangements were the agreed settlement, that the agitation by Grace for a route to the United States for Panagra was ended, and that any application by Panagra would be only upon action of its board of directors, meaning by mutual agreement of the parents (D. Ex. P-419, R. 3763; P-420, R. 3916; P-421, R. 4142).

Roig of Grace, also president of Panagra, testified that it was the desire of the Grace directors to obtain a permanent arrangement between Pan American and Panagra and between the parent companies settling the controversy between Pan American and Grace regarding the extension of Panagra's route to a terminal in the

has the broad jurisdiction under Section 411 of the Civil Aeronautics Act (Appendix at p. 91 below) to issue cease and desist orders against "unfair and deceptive practices" or "unfair competition" arising from the ownership or control of Panagra, and under Section 415 of the Act (Appendix at p. 92 below) the Board is given authority to "inquire into the management of the business of any air carrier." Indeed, presently pending before the Board is a Board-initiated inquiry into the management of Panagra (Docket No. 5140). And, most significantly, the one matter on which the court felt required to act—Pan American's actions on the question of Panagra's application for a route to the United States—falls squarely within the jurisdiction of the CAB as defined by the Court of Appeals in *W. R. Grace & Co.* v. *CAB, supra.* It is a contrariety to suggest that it was necessary to go to court to get effective relief against Pan American's actions in this respect when the jurisdiction to grant the most direct relief has existed in the Board for fifteen years (if the matter was open at all)—the more so when it is noted, as will be pointed out in the closing point of this brief, that the remedies which the Board could adopt and adapt are more suitable than the drastic remedy of divestment which the court has adopted, which creates many problems and solves none.

POINT V

The Civil Aeronautics Board's approval of the Through Flight and Parent Company Agreements, an integral part of which is recognition of Pan American's right to refuse to allow Panagra to extend its route to the United States, confers antitrust immunity on Pan American's exercise of that right.

Section 414 of the Civil Aeronautics Act relieves any person affected by any order made under Section 412 of the Act from the operations of the antitrust laws, insofar as may be necessary to enable such person to do anything "authorized, approved or required" by such order.

On May 5, 1947, the CAB, by order made under Section 412 of the Act, approved an agreement between Pan American and Panagra and an agreement between Pan American and Grace making the arrangements for the through flights by Panagra planes over Pan American's route from Miami to the Canal (D. Ex. P-316, R. 3284). The agreements dated July 30, 1946, were originally approved for a period of three years, and have been re-approved in 1950, 1955 and 1960 (D. Ex. P-318, R. 3308; P-333, R. 3362).

CAB approval thus relieved the parties from the operations of the antitrust laws in respect to anything done or not done in conformity with these agreements.

The agreements, which were a settlement of all controversy over the question of Panagra's applying for a route to the United States, clearly contemplated that no such application would be made unless the board of directors of Panagra authorized such application and that Pan American was not obliged to consent to such an

We submit, therefore, on the CAB record, that there can be no question about these facts and legal consequences which are conclusive against the district court's finding **of an antitrust violation of monopolization on the part of Pan American:**

(1) The Through Flight and Parent Company Agreements were a disposition of any issue relating to Panagra's application for a route to the United States, and, as this issue was the only subject on which the district court found a violation, the agreements were a disposition of the subject matter of the court's decision against Pan American.

(2) Pan American derived antitrust immunity from any antitrust charge relating to its refusal to vote in favor of an application by Panagra for a route to the United States, and was immunized against the violation found by the district court, by virtue of the CAB's approval of the agreements disposing of the matter of any such application by Panagra.

(3) The finding of the CAB that the disposition made by the agreements of the subject of Panagra's coming to the United States did "not result in creating a monopoly" is a conclusive determination of the subject of the court's finding of a violation on the part of Pan American and requires a reversal of the district court's decision.

The discussion of the subject of the effect of the CAB's approval of the through flight arrangements in the district court's opinion does not meet the point. Indeed, the opinion misstates the point and knocks down a straw man.

The opinion states that Pan American asserts it is immune from antitrust violations because the CAB approved arrangements between it and Grace respecting the

"area of Panagra's operations" (Opinion, R. 5416). With this premise which bears no resemblance to the fact, the court could dispose of the matter with the stroke of saying that "no such approval was ever sought or obtained" (Opinion, R. 5416). It was undoubtedly on this premise also that the court stated that the Through Flight Agreement was "silent with respect to the problem," which is not otherwise stated. Accurate enough, but beside the point, are the observations that the provisions of the agreement as to when Pan American was obliged to consent to an application by Panagra for service to the United States "did not negative consent under other circumstances," and that there is no basis for an inference that the Board understood it was approving a "prohibition" against Panagra's seeking an independent franchise (Opinion, R. 5417).

As the facts of the matter have been reasonably fully stated in our preceding discussion, it is not necessary to comment further on the expressions of the district court. It is perfectly clear that the arrangements which the Board approved solved the problem of Panagra's access to the United States by through flight over Pan American's route rather than by Panagra's having a route of its own, and that, while the agreement did not foreclose a future application for such a route when, as and if Panagra's board of directors might make an application, the expectation was that no such application would be made, and certainly it was understood that Pan American was under no obligation to vote in Panagra's board of directors in favor of allowing such an application to be made.

The legal consequence of antitrust immunity to Pan American follows from doing what was authorized and approved by order of the Board approving the agree-

To say now that this creation of Pan American's should be cut off from Pan American, and the value of the investment in Panagra which Pan American has built from the beginning over a period of thirty-five years should be surrendered, is to deal a blow to creative and constructive enterprise which would be very hard to justify, and which, we submit, cannot be justified by the facts of this case, by any finding of the district court, or by any argument that can be advanced in support of the decree.

A remedy by injunction would be fully adequate

Remedy by injunction, rather than by divestment, is indicated by all that the district court has found against Pan American, and there is nothing in the district court's opinion to suggest that remedy by injunction would not serve adequately or that the remedy of divestment is required for any reason.

The district court found nothing illegal in the ownership of Panagra by Pan American. On the contrary, the court found the ownership and all the arrangements between the owners and with the subsidiary to be altogether legal and in the public interest. Significantly, these approved arrangements include joint offices, joint selling and joint publicity between Pan American and Panagra. The only thing which the court found wrong was the normal exercise by Pan American of its half-ownership of Panagra in a vote by the owners on *one matter*, the extension of Panagra to the United States. The court has not suggested any reason why an injunction against Pan American's acting in the way which has been found objectionable in this matter would not serve adequately and satisfactorily as a remedy. Indeed, the

opinion contains no discussion of the vital subject of remedy and gives no indication of any consideration of the subject. A lone sentence in the opinion, wholly conclusory, is all that the district court has addressed to the question. The opinion merely states that Pan American has created a situation that "cannot be righted so long as it retains the negative control that it now possesses over Panagra" (Opinion, R. 5415). Why it cannot be righted by an injunction against the objectionable respects of the exercise of that "negative control," which in both owners has been found to be legal, is not intimated.

We submit that it is clear that an injunction would serve fully well. No complexity or difficulty in the framing or administration of an injunction would be presented. It could be as simple, and, if desired, as broad as the injunction which has been incorporated in the decree as relief "pending" divestment—an injunction against Pan American's "taking any action, direct or indirect, which would interfere with the filing or processing of applications before the Civil Aeronautics Board by Pan American-Grace Airways, Inc. to alter, amend, modify or extend its routes" (R. 5435-436). In short, Grace could make in the name of Panagra any application it wished, and if Pan American thought that any such application was contrary to Panagra's or the national interest, it could address its "arguments" to the Board, where, in the court's opinion, all such arguments should be heard and determined.

There is no need or warrant whatever to divest Pan American from its interest in Panagra to right the wrong which has been found and to be both corrective and preventive in the remedy. There is no suggestion in this case that Pan American has acted in bad faith, or that

it has improperly used Panagra, or that it would be recalcitrant or uncooperative in carrying out the mandate of the court. All that could fairly be said against Pan American here, if the findings of the district court were sustained, would be that it has made an honest mistake as to its legal rights. With a judicial declaration on the subject, there can be no question about Pan American's following the directive in good faith and proper spirit.

The goal which this Court has set in antitrust remedies is devising "measures effective to restore competition." *United States* v. *duPont & Co.*, 366 U. S. 316, 326 (1961). The competition here sought to be "restored" is competition to be "created" through an application by Panagra to parallel Pan American's route from Miami to the Canal. It remains very much open to question whether the CAB would grant the application. Certainly, an injunction is a measure fully effective to bring the application to the only forum where it can properly be brought, which is the CAB.

An injunction is particularly appropriate where the violation has been only in the partitioning of territory between joint venturers (*Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 604 (1951)) or where the ownership involved, as to which divestiture is suggested, has been legally acquired and an injunction would eliminate the illegal agreements or practices (*United States* v. *National Lead Co.*, 332 U. S. 319, 351 (1947)).

In this case Pan American's creation and joint ownership of Panagra have expressly been found legal by the district court. An injunction against Pan American's voting practices with respect to route applications would eliminate the only violation found.

The full adequacy of an injunction to prevent abuses of corporate voting power is demonstrated by the fre-

quent use that courts have made of injunctions controlling corporate voting powers. Decrees enjoining specified uses of voting power were issued in *United States* v. *Imperial Chemical Industries, Ltd.*, 105 F. Supp. 215, 244 (S.D.N.Y. 1952); *United States* v. *General Electric Co.*, 115 F. Supp. 835, 871-6 (D. N. J. 1953); and *American Crystal Sugar Co.* v. *Cuban-American Sugar Co.*, 152. F. Supp. 387, 400-401 (S.D.N.Y. 1957); *aff'd*, 259 F. 2d 524 (2d Cir. 1958). Corporate or analogous organizational machinery was also regulated by injunction in *Associated Press* v. *United States*, 326 U. S. 1 (1945), where the observance of a by-law was enjoined and in *United States* v. *Minnesota Mining & Mfg. Co.*, 96 F. Supp. 356 (D. Mass. 1951), where a corporate charter was ordered to be amended.

It is submitted that there can be no question about the adequacy of an injunction as the remedy in this case, and, therefore, that the extremely harsh remedy of divestiture should not come into consideration.

Divestiture is inappropriate according to standards established by this Court for determining the appropriateness of divestiture

This Court has defined the purposes to be served by divestiture and thus indicated that divestiture is to be resorted to only when the ends require the means. Thus divestiture has been found appropriate to three ends, as stated in *Schine Chain Theatres, Inc.* v. *United States*, 334 U. S. 110, 128-9 (1948): (i) to put an end to the combination or conspiracy when that is itself the violation; (ii) to deprive the antitrust defendants of the benefits of their conspiracy; and (iii) to break up or render impotent the monopoly power which violates the Act. The ends to be served by the means of divestiture were similarly stated

That the agreements were definitely understood to end the Grace agitation for an independent route of Panagra to the United States and end all controversy on that subject is highlighted by the *Panagra* brief to the CAB, seeking approval of the agreements. In ***bold type*** the brief stated:

> "The controversy which led to Docket 779 [specifically stated in the brief to be the desire of the Grace directors to have Panagra apply for a route to the United States and the refusal of the Pan American directors to allow Panagra to so apply] has been settled and the aggravating cause of earlier deadlocks has been permanently eliminated." (D. Ex. P-242, R. 3038, 3040.)

And on oral argument before the Board (D. Ex. P-419, R. 3763, 3786), counsel for Panagra stated:

> "• • • the record shows here clearly that there has been only one basic controversy in perhaps

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have been opposed to the making of such application for the reasons that I have indicated. So far as I can see at the moment, I see no reason, and I have no reason to think that Pan American's views would change.

"What may happen over 99 years is more than I can say. Now, as to the understanding with respect to Grace, that has already been testified to by Mr. Roig, and I am in complete accord with what he said.

"Q. Mr. Roig said in another connection, in the course of his testimony, Mr. Friendly, that this contract removes the basic difficulty which has existed between Pan American and Grace with respect to Panagra. Do you concur in that opinion? A. One hundred percent.

"Q. *In other words, you think the basic difficulty has been the question of whether Panagra should be permitted to come into the United States independently?* A. *I certainly do.* I don't mean to say that we haven't had other matters on which we have differences of opinion just as officers of a company may have differences of opinion with each other, but over the years this is the only one—at least over recent years—the only one that has given rise to any real difficulty." (Italics supplied.)

> [sic: Panagra's] operations. That has been this extension problem. The line has prospered and grown:
>
> "The partners have cooperated under many headings. There has been a great deal of pioneering and efficient service, *and if this solution, which we believe is a solution, is accepted by the Board, any cause for future deadlock or difficulty is eliminated.*" (Italics supplied)

There was no doubt whatever of the meaning of these agreements at the time and there has been no doubt ever since. The decision of the CAB approving the agreements (*Pan American-Panagra Agreement*, 8 CAB 50 (1947)), noting the applicants' assurance that the agreements were a "settlement of their difficulties" and that the "controversy has been resolved" (8 CAB at 61), was recognition of the fact that Panagra would not come to the United States over its own route. And the purport of the agreements could not be stated more definitely and pointedly than it was stated in the Government's trial brief below (p. 56):

> "This agreement, *which still prevents Panagra from operating to the United States under its own certificate*, was signed on July 30, 1946." (Italics supplied)

Equally clear, beyond question, was the fully appreciated fact that Board approval of the agreements gave the parties antitrust immunity.

Chairman Landis made the observation at the argument that "Of course our approval of the agreement gives you immunity from the Sherman Act" (D. Ex. P-419, R. 3763, 3907).

This consequence was recognized by the CAB in the most practical and pointed way by its action, of which the

Government tells us in its trial brief below (p. 2), in countermanding its 1945 request that the Department of Justice institute this antitrust action against Panagra's two owners.

Finally, the decision of the CAB, approving the through flight arrangements and agreements, contained a finding on the merits of any question which might be raised of possible monopolization on the part of Pan American in refusing to countenance an application by Panagra for a route of its own to the United States. This finding, which is conclusive against the district court's finding against Pan American, was that the "transaction," consisting of the through flight and parents' agreements, "is not adverse to, nor inconsistent with, the public interest, that such transaction does not result in creating a monopoly • • •." *Pan American-Panagra Agreement*, 8 CAB 50, 63 (1947).

This finding of the CAB is of the utmost importance in this case and it cannot be given any narrower meaning than a finding which is *res judicata* of the issue on which the district court has made its finding and rendered its decision against Pan American.

As we have pointed out before, there is not and never was any such issue in this case as the district court has found and on which it has found against Pan American. There was no allegation in the complaint or suggestion in the Government's case that Pan American had monopolized or attempted to monopolize air transportation by voting against an application by Panagra for a route of its own to the United States. All that was alleged in the complaint in respect to the prevention of such an application was that such prevention was "in accordance with" the "agreements and understandings" between Pan American and Grace "to form Panagra and to divide and allocate the areas of air transportation" (R. 10). The

theory of the complaint was that there was a combination between Pan American and Grace which embraced all air transportation between the United States and South America, which took shape in the formation of Panagra and consisted of a division and allocation of all such areas of air transportation between Pan American and Panagra. There was not the slightest hint of a suggestion in the complaint, and the Government certainly never had such a thought, that Pan American's refusal to vote for an independent route for Panagra between Miami and the Canal was alone and unilaterally a monopolization of air transportation between the United States and South America. Such an idea was injected into this case only by Grace, as an opportunity which it saw and seized upon to revive its abandoned claim against Pan American and turn this case into a new Grace offensive against Pan American. Altogether unwarrantedly, we submit, the district court has also seized upon the non-existent issue and made it the basis of its entire decision against Pan American.

In this course of events, the decision of the CAB approving the through flight arrangements takes on a special and conclusive significance. It was addressed directly to any such question as might ever be raised as to whether there was anything monopolistic in the arrangements by which Panagra would fly to the United States over Pan American's route instead of over a route of its own. After the specific determination made by the Board on that question, that no monopoly was created thereby, a determination which by law it had to make in order to approve the through flight agreements, it was no longer open to anyone to claim that there was an antitrust violation in what the district court has termed the "suppression" of Panagra's extension to the United States.

ments. Further, as we have shown, the Board's finding that the arrangement was not monopolistic is a conclusive determination on the merits of any issue, such as Grace has raised and the district court has decided, of whether Pan American has monopolized any trade or commerce by settling its controversy with its partner in the Through Flight Agreement.

POINT VI

Divestiture would be an inappropriate, unnecessary and unwarranted remedy. It would be seriously prejudicial to the public interest and Panagra and severely penal on Pan American and its stockholders.

This point is written on the basis of assuming that the district court's finding against Pan American is sustained. Even if such an assumption were made, it is our submission that the remedy of divestment decreed by the court would be entirely unjustified. The remedy imposed, like the underlying decision, requires a searching review by this Court pursuant to its practice in reviewing antitrust decrees brought up under the Expediting Act from a district court composed of a single judge. *United States* v. *duPont & Co.*, 366 U. S. 316, 322-325 (1961); *International Boxing Club* v. *United States*, 358 U. S. 242, 253, 263 (Frankfurter, J. dissenting in part) (1959); *United States* v. *United States Gypsum Co.*, 340 U. S. 76, 89 (1950).

Divestment is the harshest of remedies, so drastic that it has been ordered by this Court only in rare cases. *United States* v. *duPont & Co.*, 366 U. S. 316, 326 (1961); *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 602 (1951); *Report of the Atty-Gen's Comm. to Study the Antitrust Laws* 354 (1955), noting that in only 24 litigated

cases had orders of divestiture been issued in 60 years of Sherman Act history. The deprivation and depreciation of investment—more punitive than the usual punishment on a criminal conviction—are not to be sanctioned, in a proceeding which is not penal in nature and where relief must not be punitive, unless no other remedy is available and adequate. *United States* v. *duPont & Co.*, 366 U. S. 316, 326 (1961); *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 409 (1945).

We shall make clear here that another remedy—injunction—is not only available and altogether adequate, but that it is much to be preferred on every consideration over divestment; that, indeed, in considerations of public interests, divestment would be a most unfortunate remedy; and that divestment would be unfairly and unconscionably penal upon Pan American stockholders.

The effect of the decree upon Pan American and its stockholders will be our last reference, but it still seems in order to make first reference to the fact that divestment in this case would be so drastic as to be unbelievably unjust. This is no case either of the creation of monopoly with the investment which would be forfeited by divestment, or of use of the investment to create monopoly. It is a case of an altogether creative investment. Panagra is a child of Pan American, as truly as any subsidiary could be child to a parent corporation. Panagra was Pan American's creation in a day when there was no airline industry, and this infant in an infant industry has grown in immense useful public service, not only with the investment and financial support of Pan American but also through receiving from and sharing with Pan American all the skills, experience and promoting effort which have distinguished Pan American as an ever pioneering airline.

in *International Boxing Club* v. *United States*, 358 U. S. 244, 253 (1959).

It is apparent that of the three ends which may be so attained, only the third would be a relevant consideration in this case, the first two being wholly inapplicable, as the district court has found that there was no combination or conspiracy and that the formation and ownership of Panagra have been entirely legal, so it cannot be contended that Pan American's interest in Panagra is in any respect a benefit from a conspiracy or the fruit of a violation of law.

The third end could be suggested as an argument for divestiture only if it could be said that Pan American's stock ownership in Panagra grants monopoly power and hence that the ownership is illegal. But, as the court has found the ownership to be legal, without any suggestion that it grants monopoly power, and that only the vote of the stock in one particular has illegal connotations, it is apparent that divestiture is not required or appropriate, and that an injunction is all that is warranted.

Divestiture would be contrary to law and a serious public harm

We have previously pointed out the grave error which the district court has committed in infringing upon the jurisdiction of the CAB and rendering a decree which defeats national policy in air transportation as declared by the CAB. Everything that has previously been said of this error applies to the present point of the inappropriateness of the remedy of divestiture. That remedy is not merely inappropriate and unwarranted for the reasons already stated, it is positively prejudicial to the public interest and seriously so.

The CAB currently, for some time past and in the future, has the problem of the Latin American route

pattern. The design and development of the route pattern is the responsibility of the CAB, shared only with the President of the United States. A court should do nothing which would interfere with the Board's freedom of action or create a condition which would adversely affect the performance of its task.

Airline ownership is obviously a matter of prime importance affecting the Board's thinking, judgment and action. The ownership of Panagra, whether by Pan American and Grace, Pan American or Grace, Pan American or Grace and anyone else, Braniff or whomever, is a major consideration affecting the determination of the route pattern and allocation of routes. If the court is going to decree divestiture it is going to strike at the foundation of the Board's functioning.

It is no answer at all to this fact to say that the Board came to court and asked the court to make a decree of divestiture. If the court had given the decree requested, whatever else might be said against it, the argument could not be made that the court had interfered with or prejudiced the Board's functioning. But when the court entered a very different decree from that requested and one which presents the Board with new problems and difficulties and necessarily affects its determinations, the court exceeded any proper exercise of its power and prejudiced the performance of a vital governmental task by the responsible agency of government.

Nor is it any answer to say that a court does not have to dismiss a suit or enter a decree as requested by a complainant, even an agency of government. While ordinarily a court has discretion as to the relief to be granted, the present case is no ordinary action. It is so extraordinary that we have contended that it was beyond the court's jurisdiction, or at least that the court should not have entertained jurisdiction, because its decree would

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The words of a recent head of the Antitrust Division of the Department of Justice on the subject of the tax consequences of divestiture are highly relevant:

> "Bear in mind, the 1890 Sherman and the 1914 Clayton Acts, the basic antitrust statutes, became law before the income tax was a reality. And the landmark antitrust cases—dissolving illegal trusts and monopolies via divestiture—were largely a product of an era marked by no income tax or much lower tax rates. Indeed, there is real basis for concluding that some benchmark antitrust divestiture cases listed in attachment A, which I submit for your record, if I may, Mr. Chairman, might well not have been decreed had today's tax rates prevailed." Robert A. Bicks, Assistant Attorney General, *Hearings on H.R. 8126 Before the Committee on Ways and Means, House of Representatives*, 86th Cong., First Sess. 18 (1959).

This Court has stated many times that the sole purpose of an antitrust decree is the restoration of competition and not the punishment of the offender. *United States* v. *duPont & Co.*, 366 U. S. 316, 326 (1961):

> "Courts are not authorized in civil proceedings to punish antitrust violators, and relief must not be punitive."

See also *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 409 (1945); *United States* v. *National Lead Co.*, 332 U. S. 319, 335 (1947). The caveat is particularly pertinent to decrees of divestiture. *E.g., Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 602-603 (1951).

We submit that many considerations, and every consideration, dictate against a decree of divestiture. Even if the decision of the district court were alone taken as the

basis for determining the remedy, there can be found no basis or justification for a decree of divestiture. With the finding of legality in the ownership of Panagra and in all the arrangements under which over the years Panagra operations and the selling of its service have been correlated with Pan American's in joint facilities and offices, and with the lone finding against Pan American that it has offended against the antitrust laws only in respect to its vote on the question of Panagra's extension to the United States, it is clear that divestiture is not required as a remedy and, that it would be unnecessarily and unjustifiably harsh and penal. When facts outside of the decision of the court are considered, the effect of divestiture upon the exercise of the jurisdiction and responsibility of the CAB in formulating a Latin American route pattern and effectuating national policy in air transportation, and the effect of divestiture upon Panagra, Pan American and Pan American stockholders, it becomes all the more apparent that a decree of divestiture is inadmissible.

CONCLUSION

The judgment of the district court against Pan American should be reversed and the complaint of the Government dismissed.

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necessarily impinge on a jurisdiction which only the administrative agency can exercise. Confronted with this fact the only possible justifiable action of a court is dismissal of the complaint or granting the relief requested by the agency. If the court did no more than what the administrative agency asked as an aid, no one could complain on grounds of jurisdiction or public prejudice. But if the court does anything else, other than dismiss the proceeding, and creates a different situation from that with which the administrative agency was confronted when it came to court, and different from the situation it sought to create by coming to court, the court has exceeded its jurisdiction and prejudiced the responsible administration of the governmental function entrusted to the agency.

It cannot be suggested that a decree of divestiture against Pan American would not profoundly alter the conditions with which the CAB will have to deal and profoundly affect the whole administrative decisional process with respect to the Latin American route pattern. How serious the effect would be is not a matter of conjecture. It would be of the utmost seriousness, the defeat of declared national policy, for it would divorce Panagra from Pan American and thus sever it from the two-system American flag pattern of which it is a part, prevent its attachment to Braniff as the only alternative within a two-system American flag pattern, and isolate it as a third American flag carrier into South America. How the CAB could then deal with the situation, and avoid or ameliorate the waste of public funds and private investment which three carriers into Latin America would entail, is beyond speculation or suggestion in this action. But certain it is that a condition which is the antithesis of what the Board has declared to be desirable should not be created by court decree.

The district court has stated that what the Board wanted, for its consideration, was an application from Panagra for a route to the United States, and that what Pan American should have done was to supply the application and then argue out the merits or demerits before the Board. The injunction provision of the decree brings this stated desideratum to pass. Such a decree, at least, does not offend against administrative responsibility and preserves the Board's freedom of action. To go beyond such a decree, however, and fundamentally change the underlying conditions for Board consideration, in a way so contrary to its indicated desires, would be a serious public harm, which is not lessened by the obeisance to the Board in the provision of the decree leaving t' e formulation of the plan of divestiture and its timing to the Board.

The divestment provision of the decree thus runs counter to the fundamentals of administrative law and contrary to law as enacted by the Congress in vesting the regulation of air transportation and the protection of the public interest therein in the CAB.

A decree of divestiture as to Pan American would be contrary to law in still another respect. It would have the effect of passing control of Panagra to Grace. Grace is a steamship company and holds its half interest in Panagra only by reason of the fact that this interest was acquired prior to passage of the Civil Aeronautics Act of 1938 (now named the Federal Aviation Act). Section 408 of that Act (Appendix, p. 90) expressly forbids the acquisition of control of an air carrier by a surface carrier unless Board approval is first obtained. Approval is prohibited unless, among other things, the Board can find "that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition." This is the classic

steamship operations and many other interests, to which Panagra would be subsidiary.

Potential purchasers of Panagra stock would also be concerned about Panagra's route structure. They would realize that Panagra severed from Pan American would have difficulty existing on its present routes. Without the Through Flight Agreement Panagra would be dead-ended at the Canal Zone. Any purchaser, therefore, would know that he was taking a gamble: first, on what, if any, additional routes would be awarded to Panagra by the CAB; second, on how Panagra would fare in the division of business between three competitive American carriers in Latin America, the consequence of which would be, as stated by the CAB, a waste of private investment.

It is extremely doubtful that any other airline would be interested in buying a half interest in Panagra and becoming a 50-50 partner with Grace, and it is equally doubtful that any other corporation or investing group would want to acquire a half interest, except possibly at a bargain price as a speculation. If divestiture were effected by a public offering, it is certain that Pan American could not realize any amount remotely resembling the true value of its investment in Panagra. And if divestiture were effected by a distribution to Pan American stockholders, they would be similarly subjected to loss when they attempted to sell that part of their investment (then represented by Panagra stock) which had been altered against their will by judicial decree into a form radically different from that in which they chose to invest.

Finally, there would be serious harm to Pan American and its stockholders, regardless of the manner of divestment, in the tax impact of divestiture. So serious can the tax consequences of a decree be that it is well recognized that in framing a decree in antitrust cases the court

should give due consideration to the tax consequences (*United States* v. *Minnesota Mining and Mfg. Company*, 96 F. Supp. 356, 357-58 (D. Mass. 1951)), just as it should give consideration to other harm that a decree might inflict upon a defendant's property (*United States* v. *American Can Co.*, 234 Fed. 1019, 1021 (D. Md. 1916), *appeal dismissed*, 256 U. S. 706 (1921)), and avoid unnecessary harm to the investment of a defendant's stockholders (*United States* v. *duPont & Co.*, 366 U. S. 316, 328 (1961); *United States* v. *United States Steel Corp.*, 251 U. S. 417, 453 (1920)).

If Pan American were forced to dispose of its Panagra stock, the gain on such sale would be taxed at a 25 per cent rate. As Pan American acquired its stock in Panagra as a pioneering enterprise in 1928, and has consistently left earnings in the business, Pan American has virtually no tax base in the stock and the capital gain would amount to almost the entire sales price of the stock. Thus, Pan American would be penalized by divestiture by having to pay to the Government approximately 25 per cent of the proceeds of the sale.

The only means of avoiding such a confiscatory levy on divestiture would be by a *pro rata* distribution of Pan American's Panagra stock to Pan American stockholders. But this method of divestiture would only shift the exaction to Pan American stockholders, who would have to regard the distribution of Panagra stock as a cash dividend and be taxed at normal income tax rates on its value.*

---

* Whether the provisions of the recent special relief statute intended to apply only to distributions occurring as a result of the *duPont* case (*United States* v. *duPont & Co.*, 353 U. S. 586 (1956), 365 U. S. 809 (1961)) could be made applicable here is not at all clear. 76 Stat. 4 (1962); S. Rep. No. 1100, 87th Cong., 2d Sess. 1 (1962).

"auxiliary and supplementary" test, first embodied in the Motor Carrier Act of 1935 (49 Stat. 556) and reaffirmed in the Transportation Act of 1940 (54 Stat. 906, as amended, 49 U.S.C. § 5(a)(b) (1959)).

In the administration of Section 408, the Civil Aeronautics Board has *never* allowed a surface carrier to acquire control of an air carrier and it has said that "a construction of this Act which rigidly limits the participation of other forms of transportation in the air transportation field is in harmony with the intent of Congress, and is necessary to attain a full and sound development of our national air transportation system." *Railroad Control of Northeast Airlines*, 4 CAB 379, 381 (1943).

A court order of divestiture, without prior approval by the Civil Aeronautics Board of the new relationship thereby created, would in and of itself violate Section 408. The only interest of Grace in Panagra, which is protected by its "grandfather" rights, is the stock ownership which it held in 1938. Even Grace's present degree of control of the management of Panagra is the subject of a pending Board investigation (Docket 5140). Whatever question may exist as to whether Grace's pre ent degree of control of Panagra violates Section 408, there can be little question that Pan American's divestiture would so firmly cement and complete Grace's control of Panagra as to bring the resulting state of Panagra's ownership under the condemnation of Section 408.

Divestiture of Pan American would be injurious to Panagra

Divestiture would cut Panagra off from the facilities and services of Pan American which have been vital to Panagra all its life. The affiliation of the two companies has meant much more than connecting and complementary transportation services. Panagra has had all the benefits of being part of the Pan American world-wide system. It

has been able to draw upon Pan American's knowledge, experience and organization, including the use of Pan American's servicing facilities, pilot training facilities and sales organization (D. Ex. P-2, R. 1859, 1864-1868). In the CAB hearings on Docket 779 (CAB investigation of Panagra extension to U. S.) and Docket 2423 (Through Flight and Parent Company Agreement approvals) Grace and Panagra officers testified to the value to Panagra of these facilities and services (D. Ex. P-412, R. 3720-721; P-420, R. 4066-067; P-426, R. 4260).

These facilities and services have always constituted prime assets of Panagra and their elimination would be a severe loss to Panagra operationally and businesswise and would reduce the value of Panagra as a business enterprise. Such assets should not be needlessly destroyed. See *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 604 (1951); *cf. United States* v. *General Electric Co.*, 115 F. Supp. 835, 871 (D. N. J. 1953).

Divestiture of Pan American would be a serious injury to Pan American stockholders

The visitation of a serious loss upon Pan American stockholders through divestiture would come from two sources: (1) depreciation in the value of Panagra stock on a sale of Pan American's stock interest in Panagra, (2) confiscation of a large part of the proceeds of the sale.

The value of the divested shares of Panagra stock would be seriously impaired by the severance of Panagra from Pan American and its absorption by Grace. Purchasers would not pay present value for the divested stock. Loss of Panagra's connection with Pan American, upon which the public has relied, would cause the public and any prospective purchasers of Panagra stock to discount the value of Panagra. Also, the public would realize that control of Panagra would go to Grace with its vast

APPENDIX

I. Sections 1, 2 and 3 of the Sherman Act, 26 Stat. 209 (1890), as amended, 15 U.S.C. §§ 1, 2, 3 (1961).

"Section 1. "Trusts, etc., in restraint of trade illegal; * * * penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 2. "Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 3. "Trusts in Territories or District of Columbia illegal; combination a misdemeanor

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or

commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

II. Sections 401, 408, 411, 412, 414, 415 and 801 of the Civil Aeronautics Act (superseded in 1958 by the Federal Aviation Act, 49 U. S. C. 1301, *et seq.*).

Section 401. "Certificate Required.

(a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Authority [Board] authorizing such air carrier to engage in such transportation: *Provided*, That if an air carrier is engaged in such transportation on the date of the enactment of this Act, such air carrier may continue so to engage between the same terminal and intermediate points for one hundred and twenty days after said date, and thereafter, until such time as the Authority [Board] shall pass upon an application for a certificate for such transportation if within said one hundred

and twenty days such air carrier files such application as provided herein." 52 Stat. 987 (1938), as amended, 49 U.S.C. §1371(a) (1961).*

Section 408. "Consolidation, merger, and acquisition of control—Prohibited acts

(a) It shall be unlawful unless approved by order of the Board as provided in this section—

* * *

(2) For * * * any person controlling an air carrier, any other common carrier, * * * to purchase, lease or contract to operate the properties, or any substantial part thereof, of any air carrier;

* * *

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

Application to Board; hearing; approval; disposal without hearing

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition

* 49 U.S.C. §1371(a) differs from Section 401 of the Civil Aeronautics Act in that the language beginning with "Provided" is omitted and the title of the Section 1371(a) is as follows: "Certificate of public convenience and necessity-Essentiality".

of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided,* That the Board shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: *Provided, further,* That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5(8) of this title, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition: * * *"

Section 411. "Methods of competition.

The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier,

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CAB, *Handbook of Airline Statistics* (1961) 52, 53
CAB, *Monthly Report of Air Carrier Traffic Statistics* (December 1961) 52, 53
Fulda, *Competition in the Regulated Industries* (1961) 57
Handler, *A Study of the Construction and Enforcement of the Antitrust Laws* (TNEC Monograph No. 38) 62
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or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition." 52 Stat. 1003 (1938), 49 U.S.C. § 1381 (1961).

Section 412. "Pooling and other agreements; filing; approval by Board.

(a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

(b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this chapter, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this chapter * * *" 52 Stat. 1004, 49 U.S.C. § 1382 (1961).

Section 414. "Legal restraints.

Any person affected by any order made under sections 1378, 1379, or 1382 of this title shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in section 12 of Title 15, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order." 52 Stat. 1004 (1938), 49 U.S.C. § 1384 (1961).

Section 415. "Inquiry into air carrier management.

For the purpose of exercising and performing its powers and duties under this Act, the Authority [Board] is empowered to inquire into the management of the business of any air carrier and, to the extent reasonably necessary for any such inquiry, to obtain from such carrier, and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information." 52 Stat. 1004 (1938), as amended, 49 U.S.C. § 1385 (1961).

Section 801. "The President of the United States.

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof." 52 Stat. 1014 (1938), 49 U.S.C. § 1461 (1961).

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC., APPELLANT

v.

UNITED STATES OF AMERICA

No. 47

UNITED STATES OF AMERICA, APPELLANT

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., AND PAN AMERICAN-GRACE AIRWAYS, INC.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 5365–5434) is reported at 193 F. Supp. 18.

JURISDICTION

The judgment of the district court was entered on May 8, 1961 (R. 5435). The notice of appeal was filed

At the same time, Grace was investigating the possibilities of an airline on the west coast of South America. Grace believed that air service would become "a real competitior of our steamers" within a decade, and that its early entry into the air transportation field would put it in a position "to meet any flying competition" (R. 966–968, 5376).

In September 1928, Pan American and Grace agreed to "associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile." The plan was to form a corporation in which the two companies would subscribe in equal shares. Pan American was to "have charge of the operation of the service from the Canal to Valparaiso and [Grace's] houses on the West Coast of South America [were to] be the agents of the company on a reasonable compensation basis" (R. 5377–5379).*

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* The letters which laid the foundation of the combination follow (R. 354–356, 359–360):

"AUGUST 31, 1928.

"Aviation Corporation of the Americas,
100 East 42nd Street,
New York City.

Attention: Mr. J. T. Trippe

Dear Sirs:

"This will confirm arrangement under which we will associate for the commencement of an airplane service in Peru with the view of ultimately inaugurating a through mail service from the Panama Canal to Valparaiso, Chile.

"A corporation will be formed under the laws of Delaware with a capital stock of $50,000, of which $25,000 will be subscribed by yourselves and $25,000 by ourselves. This corporation will pay to Huff-Daland Dusters, Inc. the sum of

Panagra was incorporated by Pan American and Grace in January 1929. In March 1929, the Postmaster General awarded the new company a contract

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$15,000 for an assignment which will convey all of the rights of that company under its present Peruvian mail contract and concession. As soon as possible after the assignment has been completed, operations will be started by this company in Peru and every effort will be made to put the business there on a paying basis.

"We will in the meantime cooperate with you in studying the costs of operation on the route from the Panama Canal to Valparaiso and also the advisability of requesting the U.S. Post Office Department to advertise for a mail contract on such route and the terms of such advertisement.

"If you determine that it is advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso, the Delaware corporation above referred to will be used in such service either by an increase in its capital stock to an amount sufficient to operate on the whole route or as a subsidiary operating in Peru. In either event our subscriptions to the stock of the Delaware Company shall be credited at their full amount in the capital setup of the corporation operating the through service. We shall also have a reasonable time after a study of the estimated costs of such operation to determine what interest, if any, we will take in the company making the bid in addition to our initial investment of $25,000, such interest not to exceed, however, more than fifty percent of the total capitalization.

"You will have charge of the operation of the service from the Canal to Valparaiso and our houses on the West Coast of South America will be the agents of the company on a reasonable compensation basis, such agency to continue during the life of transportation contracts undertaken by the company.

"The details of carrying out the above must, of course, be worked out as we go along. We believe, however, that we have stated broadly the basis of our understanding.

"Very truly yours,

"W. R. GRACE & Co.

COGSWELL

Assistant Secretary."

[Footnote continued on next page.]

for air mail service from the Canal Zone down the west coast of South America to Santiago, which became Panagra's western terminal. In August 1929, Panagra's air mail route was extended by the Postmaster General to Buenos Aires and Montevideo (R. 5379–5381). In September 1930, the Postmaster General awarded Pan American a subsidized mail

[Footnote 6 Continued]

"September 7, 1928.

"W. R. Grace & Company,
10 Hanover Square,
New York City.

Attention: Mr. William F. Cogswell.

Dear Sirs:

"We beg to confirm the arrangement set forth in your letter of August 31st.

"Supplementing paragraph four, however, we would point out the fact that in the event you decide not to take up a substantial interest in a jointly owned Company, organized or to be organized for the purpose of submitting a bid on the contract for carrying mails between Panama Canal and Valparaiso then, and in that event, we would prefer to bid on the contract through the medium of Pan American Airways, Inc., or some other wholly owned subsidiary.

"If this were done, we would arrange to allow you, if you desired, to take a further stock interest in Aviation Corporation of the Americas, in addition to the $25,000 referred to in paragraph five.

"Our Directors are delighted that we are to be associated with your firm in the development of air transportation on the West Coast of South America, and we look forward to a most pleasant and profitable relationship.

"We would appreciate your advising us if this letter, in connection with yours of August 31st, covers your understanding of our arrangement.

"Yours very truly,

"AVIATION CORPORATION OF THE AMERICAS
By J. T. TRIPPE
J. T. Trippe,
Vice President."

route from Dutch Guiana to Santos, Brazil, with an option to extend to Buenos Aires. Pan American's service to Buenos Aires was commenced in 1931 (R. 5385).

Shortly after the organization of Panagra, the "bitter family quarrel" (R. 5366) broke out between Pan American and Grace which has marked Panagra's entire history: "[B]oth interests [were] determined to have a part in the management" (R. 456). During the early years, the disputes primarily concerned the pace and scope of development of the service within South America. Officials of Panagra and Pan American charged Grace with providing insufficient support for the new air service through its South American offices and with favoring its own steamship lines.[7]

Beginning in the late 1930's, with the expansion of air travel, Grace sought to take over the active management of Panagra. Thereafter, the dispute focused largely on Grace's efforts to extend Panagra's operations north of the Canal Zone to the United States, a route which would have brought Panagra into competition with Pan American.[8]

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[7] *E.g.*, R. 462–463, 504–505, 970, 979–980, 983–986, 1005–1011, 1024–1028, 1030–1033, 1054, 4071–1073, 1080–1082, 1089–1092, 1096–1101, 1103–1105, 1108–1112, 1124–1127, 1131–1133, 1136–1138, 1143–1167, 1177–1180, 1182–1184, 1188–1190, 1192–1194.

[8] For discussion of this problem by the Civil Aeronautics Board, see *Panagra Terminal Investigation*, 4 C.A.B. 670; *Additional Service to Latin America*, 6 C.A.B. 857, 912–916; *Pan American-Panagra Agreement*, 8 C.A.B. 50; *New York-Balboa Through Service Proceeding, Reopened*, 18 C.A.B. 501, 504–506.

3. *Division of Territories in South America.*—As the district court found, "[t]here is no doubt that [Pan American and Grace] came to agree upon a division of territories" (R. 5395) between Pan American and Panagra, under which Pan American would serve the north and east coasts of South America and Panagra would serve the west coast and the trans-Andean route between Santiago and Buenos Aires. The complaint alleged, and Pan American asserted below, that such an agreement was made at the time Panagra was formed and that it covered not only South America, but also traffic between the United States and the Canal Zone. Grace contended, on the other hand, that the territorial division was made only after Panagra had been formed, and that it was limited to South America (R. 5370, 5395–5396).

Both Pan American and Grace repeatedly recognized, and endeavored to enforce, the agreement for division of territories. In 1930 Pan American ordered a subsidiary to cease flights from Buenos Aires to Santiago on the ground that the agreement with Grace prohibited Pan American's operation on that route and "likewise restricts" Panagra from operating east of the Andes except on that route (R. 512–513, 5396). In 1931, and again in 1937, Grace insisted that Pan American stay out of the western part of Colombia, as "definitely in Panagra's territory under our agreement" (R. 545–546, 582–583, 584–586, 5397). Pan American, in 1946, relied upon the agreement to object to any service by Panagra to Bogota (R. 633–634). Similarly, in 1929

and 1935, discussions between Pan American and Grace about proposed service by Pan American and Panagra to Bolivia were framed in terms of the territorial agreement (R. 509–511, 549–550, 5397).

4. *Panagra's Service to the United States.*—Beginning in 1938, Grace proposed to extend Panagra's service (which terminated at the Canal Zone) to the United States, so that Panagra would no longer be dependent on Pan American's service north of the Canal Zone. Prior to 1938, the Post Office Department had enforced a "no-parallel" policy of subsidizing only one carrier on each international route. On its formation in 1938, however, the Civil Aeronautics Board substituted a new policy of regulated competition which would allow the subsidization of more than one carrier on the same route. Consequently, it became possible for Panagra, as well as Pan American, to obtain a subsidy between the Canal Zone and the United States (R. 5405, 5409–5410).

Pan American rejected Grace's proposal for the competing service. It instructed its nominees on the Panagra board of directors that "it would not be in the interest of our stockholders [Pan American stockholders] for our directors to authorize an application by [Panagra] to extend north of [the Canal Zone] in competition with Pan American", for most of the traffic of Pan American between the Canal Zone and Miami originated or was destined to points on Panagra's South American routes and the opening of a parallel Panagra route in competition would divert all or a major part (R. 5405). In 1939, Pan American and Grace reached an agreement under

> between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor * * *.

STATEMENT

The government's complaint in this civil antitrust case, filed on January 11, 1954, charged that since 1928 appellees Pan American World Airways, Inc. ("Pan American"), W. R. Grace and Company ("Grace"), and their jointly-owned subsidiary, Pan American-Grace Airways, Inc. ("Panagra"), engaged in a combination and conspiracy, and were parties to contracts, to restrain and monopolize air transportation between the United States and South America, and attempted to monopolize and monopolized such transportation, in violation of Sections 1, 2, and 3 of the Sherman Act. The complaint alleged, among other things, that Pan American and Grace, when they organized Panagra, agreed that its operations would be confined to the west coast of South America and that Pan American would operate on the east coast of South America and between the United States and the Canal Zone; that, pursuant to such an agreement, Panagra has refrained from seeking or obtaining operating rights on the east coast of South America; that Pan American used its 50 percent control of Panagra to prevent the latter from securing authority from the Civil Aeronautics

Board to extend its route from the Canal Zone to the United States; and that Pan American and Grace had exercised their joint control of Panagra to "block and prevent" any action by Panagra that either of them viewed as "contrary or detrimental to its own particular interests" (R. 1-12).

After trial, the district court held that Pan American had monopolized and attempted to monopolize air transportation between the United States and South America and between the United States and the Canal Zone in violation of Section 2. But the court further held that the government had failed to prove its other charges. It ordered Pan American to divest itself of its stock interest in Panagra because of the violation of Section 2, and dismissed the complaint as to the other two defendants.

The underlying facts, as found by the district court and as supplemented by undisputed evidence, are as follows:

1. *Description of the Companies.*—Pan American and Grace each own 50 percent of the stock of Panagra. Panagra has been certified by the Civil Aeronautics Board as an air carrier to engage in transportation between the Canal Zone and the west coast of South America to Santiago, Chile, and across the Andes to Buenos Aires, Argentina, and Montevideo, Uruguay. Panagra presently provides a through service to and from the United States by equipment interchanges with Pan American between the Canal Zone and Miami, and with National Air Lines between Miami and New York. In recent years, Pan-

agra has carried from 79 to 86 percent of the airline passengers on United States flag carriers between this country and western South America, and from 50 to 75 percent of the passengers transported by all air carriers (including foreign carriers) (R. 5368, 5401, 5417).[2]

Pan American is not only the largest United States international air carrier but the largest in the world. It carries passengers, freight, and mail between the United States and the Canal Zone, between the United States and the east coast of South America, and between the Canal Zone and the east coast of South America. Its southern terminal is Buenos Aires (R. 5367, 5401). Pan American carried from 66 to 85 percent of all the traffic between the United States and eastern South America during the 1950–1957 period, and between 84 and 95 percent of the traffic with eastern United States. Pan American and Panagra together presently carry from 75 to 88 percent of airline passengers on United States flag carriers between this country and South America, and about 50 percent of the airline passengers transported by all carriers. Prior to 1948, when Braniff commenced certificated operations between Texas, the Canal Zone, and South America, Pan American was the only United States air carrier operating between this country and the Canal Zone (R. 5400-5402, 5404, 5407).

Grace is engaged in various industrial and other enterprises in western South America. It wholly owns Grace Line, Inc., which operates steamship

[2] Pan American controls the leg of the flights north of the Canal Zone.

service between that area and the United States. Grace Line is the only United States flag water carrier providing regularly scheduled service between the east coast of the United States and the west coast of South America.[3] Grace carries from 81 to 94 percent of the total passenger traffic on this route, about 60 percent of all northbound freight, and about 50 percent of all southbound freight (R. 1423–1427, 1441–1450, 5367–5368).

2. *The Organization of Panagra.*—In 1928, when Panagra was organized, Pan American was seeking to develop an air transportation service throughout South America.[4] Its proposed service to eastern South America was based upon contracts with the Post Office to carry air mail. Under these contracts, a subsidy was provided for service from Florida to Cuba, Puerto Rico, the Canal Zone, and Trinidad. The Postmaster General had the power to require the extension of such subsidized services along the northeast coast of South America to Dutch Guiana (R. 5372–5374).[5] Pan American was also negotiating for operating rights in the western South American countries (R. 5375–5376).

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[3] Such scheduled service is commonly described as "liner service" or "regular carriage," as distinguished from "irregular" or "tramp" service.

[4] The association of Pan American and Grace in aviation in western South America dates from their letter agreement of 1928 (see *infra*, pp. 8–10).

[5] Under the Foreign Air Mail Act of 1928, 45 Stat. 248, as amended, March 2, 1929, 45 Stat. 1449, the Postmaster General awarded ten-year contracts for air mail service, with payment being made on the basis of mileage flown, not the amount of mail carried (R. 5373).

which Grace took over the management of Panagra, and Pan American promised to provide an adequate connecting service between Miami and the Canal Zone (R. 729–730).

Thereafter, when Panagra faced a threat of competition in western South America by another American air carrier, Grace again pressed for Panagra to apply to the Board for extension of its route to the United States, this time proposing flights from the Canal Zone to New Orleans. Pan American, which was itself seeking the same route, rejected this proposal also, and instructed its nominees not to attend any meetings of the Panagra directors at which the subject was discussed (R. 5405, 5410).

Grace then filed with the Board a petition on behalf of Panagra to extend Panagra's routes to the United States, and a complaint to require Pan American to terminate certain allegedly illegal conduct. It also intervened in a pending Board certification proceeding in which other carriers were seeking authority to operate between New Orleans and the Canal Zone. After an investigation, the Board concluded that it had no authority to extend Panagra's routes unless Panagra itself applied for the extension, and dismissed the proceeding. *Panagra Terminal Investigation,* 4 C.A.B. 670. The Court of Appeals for the Second Circuit reversed, holding that, if Pan American's objection to Panagra's applying for a route extension was due to "illegality and fraud," the Board could entertain the application filed by Grace. *W. R. Grace & Co.* v. *Civil Aeronautics Board,* 154 F. 2d 271, 281–282. This Court granted certiorari. 328 U.S. 832 (R. 5411–5412).

Meanwhile, the Board had been considering the application of numerous carriers for routes between the Canal Zone and the United States and elsewhere in South America. The Board's examiners and public counsel reported that Panagra was entitled to a certificate for a route from the Canal Zone to the United States because this would provide western South America with the convenience of one-carrier service to the United States and would therefore best serve the public interest. However, they said that Panagra could not be given the route because Pan American had prevented an application from being filed. The Board itself divided evenly on the question whether to authorize other carriers on the Canal Zone-United States route and in South America generally and therefore no new service was authorized (R. 5412-5413). After the President directed the Board to choose an additional carrier to South America, Braniff was selected in 1946.[9] In its opinion, the Board said that Pan American and Grace "in the public interest * * * cooperatively should enable Panagra to apply for access to the east coast of the United States." *Additional Service to Latin America*, 6 C.A.B. 857, 914.

In 1946, Pan American and Grace reached a settlement on the issue of Panagra's access to the United States. The settlement included a through flight agreement between Pan American and Panagra, under which the latter could fly directly to Miami by authority of the Pan American certificate over Pan American

[9] The Board certificated Braniff Airways to fly from Texas to the Canal Zone, Colombia, Ecuador, Peru, Bolivia, Paraguay, Brazil, and Argentina. *Additional Service to Latin America*, 6 C.A.B. 857.

by Pan American on May 12, 1961 (R. 5446), and by the United States on July 7, 1961 (R. 5447). On January 15, 1962, this Court postponed consideration of the question of jurisdiction until the hearing on the merits (R. 5449). 368 U.S. 964, 966. The question is discussed below at pp. 25–26.

QUESTIONS PRESENTED

The appeals in these cases grow out of a single antitrust suit. The initial question is whether the order from which the appeal was taken is "final" for the purposes of appellate jurisdiction. The ultimate question on the merits in both cases is whether the combination of Pan American and Grace to form an airline (Panagra) operating on, and confined to, the west coast of South America, in which each would have 50 percent stock ownership, together with their division of markets and other incidental arrangements, was, in its inception and operation, a violation of the Sherman Act requiring a decree ordering both Pan American and Grace to divest themselves of the stock.[1]

Subordinate questions specifically raised by the appeal of the United States (No. 47) are:

(a) Whether the combination and incidental arrangements violate Sections 1 and 3 of the Sherman Act because they were essentially an unlawful division of territory and commercial interests.

[1] The views of the government on this basic issue, which relates to both appeals, will be discussed in this brief. In addition, this brief will discuss the issues peculiar to the appeal of the United States in No. 47. The only issues, except for the customary rebuttal, which will be left to our subsequent brief, are those relating only to Pan American's appeal in No. 23.

(b) Whether the combination violates Sections 1 and 3 because it gave Grace, the holding company which controlled the dominant steamship carrier serving the United States and the west coast of South America, control over the dominant air carrier serving the same area.

STATUTE INVOLVED

Sections 1, 2, and 3 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, 2, 3, provide in pertinent part:

> SECTION 1: Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy declared * * * to be illegal shall be deemed guilty of a misdemeanor * * *.
>
> SECTION 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor * * *.
>
> SECTION. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or

America, and between United States and the Canal Zone (R. 5398–5416).[10]

As to Grace, the court held that 50 percent ownership of an airline by a parallel steamship company does not *per se* violate the Sherman Act (R. 5421–5425). It further held that no restraint on competition had been shown to have resulted from the relation between Grace and Panagra. The court was "not persuaded that the * * * market is the same," *i.e.*, that air traffic was competitive with sea traffic to the west coast of South America (R. 5426). The court said that the principal business of Panagra is the transportation of passengers, that of Grace the carriage of freight; and that it had not been shown that passengers or shippers of one of these carriers were potential customers of the other (R. 5425–5429). Finally, it ruled that, in any event, the government had to show that Grace had restrained or monopolized commerce. There was, the court believed, no such showing. On the contrary, Grace was the partner which had "fostered and fought for Panagra development and expansion" (R. 5392, 5429).

The court's judgment, entered on May 8, 1961, (1) dismissed the action with respect to Grace and Panagra; (2) directed Pan American to divest itself of its stock in Panagra pursuant to a plan of divestment to be formulated by the Civil Aeronautics Board and

[10] The court rejected Pan American's arguments that the issues in this case should be referred to the primary jurisdiction of the Civil Aeronautics Board and that antitrust immunity was provided by prior Board approval of various agreements between the parties (R. 5416–5420).

approved by the court; and (3) pending the divestiture, enjoined Pan American from interfering with the filing or processing of applications by Panagra before the Board to modify or extend its routes (R. 5435–5436).[11]

SUMMARY OF ARGUMENT

I

This Court has jurisdiction to hear the appeals in these cases under *Brown Shoe Co. v. United States*, 370 U.S. 294.

II

The combination of Pan American and Grace in Panagra, and the incidental undertakings between them, were in their incipiency, and still are, a combination in restraint of trade in violation of Sections 1 and 3 of the Sherman Act.

A. At the time Panagra was formed in 1928, Pan American, which was just becoming an important international air carrier, was developing routes in Central America and eastern South America. Grace was the dominant steamship line between western South America and eastern United States. The undisputed evidence shows, and the district court found, that Pan American and Grace joined to form Panagra in order to protect themselves from competition. Pan American desired to prevent the formation of an independ-

[11] Thereafter, Pan American moved to suspend the injunction in paragraph 3 of the judgment, pending appeal to this Court (R. 5437). On June 13, 1961, the district court granted the motion unless Grace agreed to stipulate that, in the event of a reversal by this Court, its nominees would vote to withdraw any Panagra application filed with the Board during the interval (R. 5443). Grace filed such a stipulation on June 22, 1961 (R. 5444).

ent American flag airline on the west coast of South America which might compete with Pan American in the rest of South America. Grace feared competition with its steamship line from an independent American airline in western South America. Thus, the very purpose of the combination was to impose substantial restraints on trade and commerce.

This purpose was fulfilled. The inherent tendency of the combination, and its actual consequence, were to suppress competition in foreign commerce of the United States between air carriers in western South America, in eastern South America, and on the Canal Zone-United States route, as well as between air and sea transportation in western South America.

1. There was a substantial likelihood at the time Panagra was formed that both Pan American and Grace would soon enter the air transportation business in western South America. Both companies were actively planning the undertaking. Implicit in the formation of Panagra was the intent that neither Pan American nor Grace would compete with their new creation in the area where it was to operate, western South America. In addition, the two parent companies agreed on a division of markets which excluded Pan American from western South America. This entire division of markets was clearly a *per se* violation of the Sherman Act. *Northern Pac. R. Co.* v. *United States*, 356 U.S. 1, 5.

The fact that the competition which was eliminated was potential, rather than presently existing in 1928, is irrelevant, for the Sherman Act has never distinguished "between strangling of commerce which has

been born and preventing the birth of a commerce which does not exist." *United States* v. *United Shoe Machinery Co.*, 247 U.S. 32, 53.

2. The formation of Panagra, along with the accompanying division of markets, also tended to restrain, and has actually restrained, competition in United States foreign commerce with eastern South America. An independent air carrier in western South America would have been a natural competitor for Pan American's operations in eastern South America as their routes expanded and their territories came to overlap. The combination barred Panagra from operating east of the Andes, except from Santiago to Buenos Aires and Montevideo, and Pan American's stock interest gave it power to enforce the agreement.

Both carriers serve Buenos Aires and Montevideo. Had they been truly independent there would have been effective competition in transporting passengers and freight between those points and the United States. Pan American's 50 percent stock interest in Panagra gave it the power, which it did not hesitate to exercise, to minimize the competition and favor its own interests.

3. The combination also had an inherent tendency to suppress, and in operation has actually suppressed, competition in air commerce between the Canal Zone and the continental United States. Pan American had the original routes between the United States and South America. If an independent carrier had

been permitted to develop on the west coast or if Grace had remained free to enter the field, the enterprise would have soon become a potential competitor between the Canal Zone and gateways in the United States. The formation of Panagra, over which Pan American could exercise negative control, gave Pan American the power to block this development. For many years it has exercised its control over Panagra for that purpose, despite criticism by the Civil Aeronautics Board.

4. The formation of Panagra seriously restricted competition between air and sea transportation between western South America and the United States.

Air and sea transportation are clearly within the same market. This fact has been recognized by Congress in numerous statutes, by the independent agencies charged with regulating transportation, and by Pan American and Grace themselves. The Civil Aeronautics Board has denied an application by Grace itself for authority to operate an airline in South America on the ground that air and sea transportation are in competition. And Grace participated in the creation of Panagra because it feared competition from an independent airline.

At the time Panagra was formed, it could readily be foreseen that the new company would become the dominant air carrier to the west coast of South America. This has in fact occurred. Consequently, Grace, the dominant sea carrier between the eastern United States and western South America, has at least negative control by its 50 percent stock interest of the dominant air carrier to western South America. This control has

been used to hold up Panagra's rates in order to lessen competition with Grace.

Grace's control of air and sea transportation between the United States and western South America clearly violates the Sherman Act under the standards laid down by this Court in *United States* v. *Columbia Steel Co.*, 334 U.S. 495. First, the percentage of the transportation business between South America and the United States controlled by Grace and Panagra is extremely high. Second, the strength of the companies in competition with them is very low. Braniff, the only other American flag carrier to western South America, does only approximately one-fifth of the business of Panagra. Third, the purpose of Grace's joinder with Pan American was, as the district court found, to foreclose independent competition with Grace's shipping interests. Fourth, the record shows that the air cargo business will almost certainly expand substantially in the near future. And finally, it is clear that the needs of shippers will be best served by real competition between air and sea carriers which will make air cargo rates competitive on an increasing variety of goods.

B. The district court agreed with the government that Pan American and Grace formed Panagra and agreed upon a division of markets, rather than proceeding independently, in order to restrain competition. Nonetheless, it ruled that there was no "conspiracy" which violated the Sherman Act. It rejected the ultimate legal conclusion that the original combination was illegal, upon the ground that the combination fostered the development of American air transportation in accordance with the policy of the

Post Office Department and brought together two companies having complementary advantages in carrying on a pioneering enterprise.

The combination cannot be saved from illegality by reference to the policies of the Post Office Department. Even though the Post Office may have approved a "no-parallel" policy, there was nothing in the policy that favored giving the carrier which would dominate commerce with the east coast of South America control over the dominant carrier to the west coast, nor anything that favored combining air and sea transportation on the west coast under common control or permitted the kind of continuing arrangement which projected monopoly power into the indeterminate future. In any event, the acquiescence of public officials does not excuse violations of the Sherman Act. *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150.

Nor is it a justification that Pan American and Grace were embarked on a new and otherwise useful enterprise. A division of markets is a *per se* violation of the Sherman Act even though the partners had no other anti-competitive purpose. *A fortiori* the combination is illegal where some of the major purposes of the formation of Panagra were to protect the existing interests of both Pan American and Grace. Even if this were a case governed by the rule of reason, the combination would have to be found illegal in both its inception and execution because the number and severity of the restraints which were inherent in the basic arrangement outweigh any countervailing advantages which it might have provided.

ARGUMENT

I

THE COURT HAS JURISDICTION TO HEAR THESE APPEALS

We submit that here, as in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, the judgment of the court below was a final judgment within the meaning of the Expediting Act, 15 U.S.C. 29, and that therefore these appeals by the United States and Pan American are properly before the Court.

In *Brown Shoe*, the district court held that Section 7 of the Clayton Act had been violated and that divestiture would be required to remedy the violation, but postponed the development of a detailed plan. The jurisdictional question was whether the failure of the district court to adopt a specific plan of divestiture pursuant to its decree deprived the decree of the finality which is requisite to appealability under the Expediting Act. This Court held that it did not. The Court, relying both upon its prior decisions and upon the "practical considerations" of workability in the enforcement of the antitrust laws (370 U.S. at 311), held the decree there to have "sufficient indicia of finality" to be properly appealable under the Act (*id.* at 308).

In the case at bar the same indicia are present. The district court likewise ordered the divestiture of Pan American's interest in Panagra, but did not specify any particular plan for this action. The only distinctions between the decrees in *Brown Shoe* and in this case are that the court here dismissed

the complaint as to Grace and Panagra, and ordered as to Pan American that the Civil Aeronautics Board formulate a plan of divestiture which would be submitted to the court for approval. The dismissal of two parties makes the order in this case, if anything, more final than in *Brown Shoe*. As to them, the district court has left nothing further to be done. The fact that in the present case the court's order sought the expertise of the Civil Aeronautics Board as an aid in formulating the details of the relief awarded against Pan American is irrelevant to the "indicia of finality" upon which this Court relied in *Brown Shoe*. Nothing in the Federal Aviation Act gives the Board jurisdiction over a divestiture or required the district court to seek the Board's advice. The court's decision to have the Board formulate a divestiture plan in the first instance does no more to deprive its divestiture decree of finality than would a decision to have a master formulate such a plan.

The order of divestiture was therefore final under the Expediting Act and the appeals will lie.

II

THE COMBINATION OF PAN AMERICAN AND GRACE IN PANAGRA AND THE CONCOMITANT UNDERTAKINGS BETWEEN THEM WERE IN THEIR INCIPIENCY, AND STILL ARE, A COMBINATION IN RESTRAINT OF TRADE IN VIOLATION OF SECTIONS 1 AND 3 OF THE SHERMAN ACT

The government's basic contention in this case is that the arrangements between Pan American and Grace, resulting in the formation of Panagra, constitute, in both their inception and subsequent operation,

a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act.[12] Therefore, we submit that the district court should have entered a decree requiring not merely Pan American but also Grace to divest itself of any interest in Panagra. Indeed, if our basic contention is sound, the propriety of complete divestiture as a remedy is too plain for argument in this opening brief. *United States v. E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 329, 331, 334. The district court itself recognized the propriety of this relief (R. 5390).

More specifically, the formation of Panagra and the concomitant undertakings between Pan American and Grace in 1928, although they had legitimate business purposes, were also conceived as a means of protecting the territories and interests of the parent companies (see *infra*, pp. 31–32). Pan American, which was just becoming an important international air carrier, sought to protect its operations in Central America and eastern South America against the development of a strong, independent competitor based in western South America. Grace, the dominant steamship line between western South America and the eastern United States, was attempting to protect itself against a new and competing form of transportation. The basic division of control—assignment of 50 percent of Panagra's stock to Pan American and 50

[12] Section 3 may be involved because part of the commerce restrained was between the Canal Zone, a territory, and both foreign nations and the United States, as well as between the United States and foreign nations.

percent to Grace—gave each the power to accomplish these objectives by blocking Panagra from taking any competitive action that threatened its interests. Pan American used this power to prevent Panagra from applying for an extension of its routes to the United States. Grace used its power to limit Panagra's rate reductions to a level which would preclude unwanted competition with its steamships. Implicit in the combination was an agreement between Pan American and Grace dividing territories and commercial interests so as to prevent Panagra from operating in the eastern part of South America or Pan American from entering the west coast territory—an agreement which all parties frequently acknowledged and invoked during the ensuing years and which Pan American could enforce through its power to block affirmative action by Panagra's Board of Directors.

Not only did Pan American and Grace form Panagra with the intent to restrain competition, but this purpose was achieved. As we show below, the joint venture in Panagra, the implicit agreement between the two parent companies dividing markets in South America, and the subsequent operation of all three companies have prevented any competition between the two parent companies or between either and Panagra in air transportation in western South America (see *infra*, pp. 33–38); it has substantially lessened competition with other air companies (see *infra*, pp. 38–39) and between sea and air transportation (see *infra*, pp. 47–66) in western South America, and sig-

nificantly reduced competition with Pan American in eastern South America (see *infra*, pp. 40–43); and for a substantial period of time it eliminated, and it still reduces, competition with Pan American in air transportation between the Canal Zone and the United States (see *infra*, pp. 43–47). In short, we submit that the formation and operation of Panagra by Pan American and Grace has very substantially restrained trade and commerce in violation of Sections 1 and 3.

The district court accepted the government's contention that Pan American and Grace joined together to form Panagra and agreed to the division of territories, rather than proceeding independently, to protect themselves from competition (R. 5389). It further stated that if the combination was an illegal restraint of trade under Sections 1 and 3, "a court of equity would not hesitate to order both defendants to divest themselves of their interest in Panagra * * *" (R. 5390). But, despite its findings of fact, the court concluded as a matter of law that Sections 1 and 3 were not violated because "no * * * conspiracy existed between Grace and Pan American" (R. 5390). The court decreed the divestiture of Pan American's interest in Panagra only because Pan American had attempted to monopolize the Canal Zone-United States segment of commerce with South America in violation of Section 2 of the Sherman Pet.

While we agree that Pan American did violate Section 2, we submit that, more fundamentally, the district court's own findings demonstrate as a matter of law that both Pan American and Grace also vio-

routes (R. 889–898). As a result of the settlement, this Court dismissed the writs of certiorari as moot. 332 U.S. 827. The reason that Panagra entered the agreement, rather than continuing to litigate for its own route to the United States, was the new competition in South America provided by Braniff, which flew to the United States. Panagra's "economic life" would have been seriously threatened pending the outcome of the litigation without through plane service to the United States (R. 5414). After further prolonged controversy between the parties, the Board in 1955 approved an interchange agreement among Panagra, Pan American, and National Air Lines, under which Panagra can provide through service on planes to New York City. *New York-Balboa Through-Service Proceeding, Reopened*, 21 C.A.B. 1005.

5. *The decision of the district court.*—After trial, the district court found that Pan American had monopolized and attempted to monopolize commerce in violation of Section 2 of the Sherman Act. The court rejected the government's other charges.

The court found that there was no conspiracy between Pan American and Grace to restrain or monopolize trade under Sections 1 and 3 (R. 5388–5393). The organization of Panagra by the two companies was, the court found, an economically sound and mutually advantageous joining of complementary resources in a pioneering venture to develop United States commercial aviation in western South America (R. 5391–5392). In the court's view, it was the parties' respective strong bargaining positions, not a "conspiracy", which resulted in the agreement for

joint control and participation. The agreement was intended to assure the best chance of success and also to protect Pan American and Grace's "independent systems from * * * competition" by giving each a veto "against the possible treachery of the other to expand the operations of the company [Panagra] in competition with their respective independent lines" (R. 5389).

The court accepted Grace's position on the agreement for the division of territories. It held that the agreement was made after Panagra had been formed and after its route was extended to Buenos Aires in November 1929, and that it covered only the routes of Pan American and Panagra in South America, and not the Canal Zone-United States traffic (R. 5396–5398). The court held that this agreement for division of territories was valid because it was "consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938" and with the government's policy in those formative years of air transportation, which was to subsidize one United States airline on each route (R. 5394–5395, 5398).

The court ruled that Pan American, in blocking the extension of Panagra's operating authority to the United States and thus excluding competition by Panagra, was not acting pursuant to the valid agreement with Grace for the division of territories. The court held that by this action Pan American had therefore monopolized and attempted to monopolize air traffic between the United States and South

2. The combination tended to suppress, and in operation has actually suppressed, competition in U.S. foreign commerce between air carriers in eastern South America

Independent air carriers operating one on the east coast and one on the west coast of South America could be expected to develop into strong competitors as their routes expanded and their territories came to overlap. Furthermore, because of the geographic shape of South America and the comparative lengths of the flight from continental United States or even the Canal Zone, each would naturally become an alternate route to points like Montevideo and Buenos Aires. The formation of Panagra and the concomitant agreement that Panagra would stay out of Pan American's territory, which Pan American's 50 percent control enabled it to enforce, prevented the development of such competition.

Even today Panagra offers no service to cities in eastern South America, excepting its terminals in Buenos Aires and Montevideo. Pan American blocked a proposal that Panagra institute a competitive service to Medellin, Colombia (R. 545–546, 582–583, 584–586, 5397). Ten years later it objected to service to Bogota (R. 633–634). When Grace had wished Panagra to extend its service from Lima, Peru, to Rio de Janeiro, Pan American would not agree (R. 639–640, 651–652, 1285–1286, 5397–5398). There were

other discussions of routes and service in terms of an agreed division of territory (see *supra*, pp. 12–13, 35).

Both Pan American and Panagra serve Buenos Aires. Together they carry more than 90 percent of the passengers who utilize United States flag airlines between the United States and Buenos Aires (R. 5401) and during the period for which evidence was introduced at trial they accounted for more than 75 percent of the United States-Argentina traffic carried by all airlines, both American and foreign (R. 5402). The west coast route is by far the shortest, because the west coast of South America lies directly south of the Isthmus of Panama and the east coast of the United States. The advantage of the west coast route is reflected in the division of Buenos Aires traffic between Pan American and Panagra; Pan American carries 40 percent of the total on American flag carriers, while Panagra accounts for more than 50 percent (R. 5401). Thus, while in ordinary circumstances Pan American would have faced the pressures of competition from the carrier flying the west coast route to Buenos Aires, its interest in Panagra ensured it of profit no matter which route—east or west—should prove to be the more successful. And the fact that Pan American receives only 50 percent of the profits made by Panagra, compared with the 100 percent share received from its own activities, gives Pan American a powerful incentive to stifle the competitive growth of Panagra in order to divert

traffic, and hence profits, into its own enterprise (R. 228–229). The original combination provided the means.

Thus, Panagra has unsuccessfully urged since 1930 that its proper development required independence from Pan American control of its offices, at least where the two carriers were in direct competition (*e.g.*, R. 1196–1197). Similarly, Grace and Panagra have continuously protested the subordination of Panagra in Pan American's publicity activities ostensibly in behalf of both carriers, particularly with reference to the competitive United States-Buenos Aires route (R. 1219–1254). The tools with which Pan American has fettered Panagra's ability to compete for Buenos Aires traffic range from the distortion of maps used in advertisements (R. 1239) to the issuance of instructions in the carriers' joint offices to sell Pan American tickets to Buenos Aires passengers, unless a Panagra routing was specifically requested (R. 1240).

There is ample support, therefore, for the district court's finding "that there is and has been for many years active and substantial competition between Pan American and Panagra in the transportation of air passengers to the United States and South America to a substantial degree and that, but for the Pan American suppression of Panagra, that competition would have been much greater" (R. 5403). And it needs no argument to demonstrate that the subjection of virtually all United States flag traffic to Buenos Aires to Pan American's control, directly or through

its 50 percent interest in Panagra, is interdicted by the Sherman Act's prohibition of monopolizing. For the power which arises from control, direct or indirect, of 94 percent of a market is a power whose attainment plainly constitutes monopolization. Cf. *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 424, 425 (C.A. 2).

3. The combination tended to suppress, and in operation has actually suppressed, competition in U.S. foreign commerce in air transportation between the Canal Zone and continental United States

A primary route to South America includes a flight between the Panama Canal and the United States mainland. While Pan American flies alternative routes to South America, the Canal Zone is Panagra's northern terminal—its gateway to the United States. For Panagra to extend its route north to the mainland would not only give it a share of that traffic but increase its ability to attract more passengers for Buenos Aires. Pan American's 50 percent stock interest in Panagra gave it the power to exclude the latter from this vital segment of the route.

The district court found that "Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes. Prior to Braniff's

lated Sections 1 and 3.[13] The finding that the two parent companies formed Panagra to protect themselves from competition and the undisputed evidence that each utilized this power to block any activities on the part of Panagra to which it might object, both require the legal conclusion that Pan American and Grace entered a combination in restraint of trade. The district court erroneously rejected this conclusion on the ground (1) that the presence of concurrent lawful purposes overcame the unlawful anti-competitive motives and effects, and (2) that the venture served American air transportation policy or was otherwise in the public interest. But, as we show below (pp. 66–74), neither of these grounds constitutes a valid legal defense that can justify the combination in restraint of trade. Consequently, Pan American and Grace must both be required to divest themselves of their interests in Panagra.

[13] The district court's holding that no conspiracy had been entered into between Pan American and Grace was clearly not a finding of fact. As indicated above, the district court agreed that the two companies had joined together to protect themselves from competition (R. 5389). The court, however, refused to find a conspiracy because it held that the joint venture of Pan American and Grace was legally justified. In short, the district court's determination that no conspiracy existed was a conclusion of law based on its logically prior legal determination that the combination between Pan American and Grace did not violate the Act.

A. THE COMBINATION OF PAN AMERICAN AND GRACE IN PANAGRA HAD THE PURPOSE AND INHERENT TENDENCY TO IMPOSE, AND HAS ACTUALLY IMPOSED, SUBSTANTIAL RESTRAINTS OF U.S. FOREIGN TRADE AND COMMERCE [14]

The undisputed evidence shows that the purpose underlying the formation of Panagra was to protect Pan American and Grace from competition. As the district court stated, "[f]rom the outset, both Grace and Pan American had to fully appreciate the dangers of competition between themselves for the [Post Office Department's] air mail contract * * * for the west coast route * * *. Grace was aware of the competitive potential of air transportation with its large steamship investments * * *. Grace's interest was

[14] The commerce involved in this case is the transportation of passengers and freight between points in the United States and points in South America. The journey (whether of passengers or goods) may be broken into several legs. Where it is broken, there are opportunities for competition with respect to any segment—not only on the segments between a point in the United States and a point in South America, but also on segments between South American points and between continental United States and the Canal Zone. For convenience, we refer to a whole journey or any segment between continental United States and a South American point as commerce between the United States and South America. For the sake of brevity we refer to the separate legs of a longer shipment or journey in the foreign commerce of the United States simply as "competition in western South America," or "competition in eastern South America" or as "competition between the Canal Zone and the continental United States."

confined to the west coast of South America where it was strongly established, and that was the only area where it faced competition from an airline" (R. 5388–5389). The court also said (R. 5389):

> By joining with each other in a joint venture on the west coast, Grace on the one hand would be assured against the entry of an independent American airline competitor into its west coast domain, and gain time to acquire the experience and know-how of this new industry, and one day perhaps to succeed to complete domination of the joint company. Pan American on the other hand would be substantially free from American flag competition in the rest of Latin America. Their method of organization of the joint company appears calculated to give each negative control of the company to insure against the possible treachery of the other to expand the operations of the company in competition with their respective independent lines, and their divisions of operational and agency functions of Panagra was similar added protection.

The court further observed that the parties appreciated the protection a combination of their interests on the west coast would afford "their independent systems from the competition of [an independent west coast American air] carrier" (*ibid.*).

The very form of the combination not only confirms the finding of an anti-competitive purpose but gave the combination an inherent anti-competitive tendency regardless of subjective intent. Pan American and Grace each secured 50 percent of Panagra's stock and would nominate half the Board of Directors. This arrangement guaranteed that

either company could block any action on the part of Panagra which threatened its individual interests. If Panagra began to develop air transportation for either passengers or freight so vigorously as to injure Grace's steamship interests, Grace's nominees on the Board of Directors could retard its activities. If Pan American found that Panagra was thinking of expanding its routes from its base on the west coast of South America into areas served by Pan American, or of flying its own planes to the United States, Pan American's nominees could vote against the expansion. It would be naive indeed to suppose that neither parent company understood these potentialities of the 50–50 division of the stock. The evil was inherent in the arrangement and has been demonstrated by events.

1. The combination tended to suppress, and in operation has actually suppressed, competition in U.S. foreign commerce between air carriers in western South America

a. Before Panagra was formed in 1928, there was a substantial likelihood that both Pan American and Grace would enter the air transportation business in western South America. In answer to the government's complaint, Pan American acknowledged that, even before its first air mail contracts were awarded, it had "formulated plans" for operations on the west coast of South America (R. 32). Virtually summarizing the government's evidence (see R. 341–343, 345, 347–349), Pan American stated in its answer that "[b]y the end of July, 1928, [it] had instituted negotiations for operating rights to Panama, Colombia and Ecuador, held an option on an oper-

ating concession in Peru which another company had obtained for Pan American's account, and had ordered sufficient aircraft to operate the northern portion of the route from the Canal down the West Coast in addition to its other routes" (R. 32).

Similarly, Grace had for some time before the formation of Panagra been considering entering the air transportation business in the areas served by its steamship line. Grace had taken pains to keep itself informed of the activities of potential competitors in west coast air transportation (R. 336–338, 343–344), it had commissioned a study of possible west coast routes by the leader of the Army's goodwill flight to South America (R. 338–339, 346), and its interest in supplying the government's airmail requirements had led to discussions with the Post Office Department (R. 339–341). Grace "regarded aviation as simply a new development in transportation" (R. 340); its view, shaped by its "big investment in steamers," was that it "should become a party to this new branch of transportation which will yearly become more important and which in ten years will be a real competitor of our steamers" (R. 966–968).

The very formation of Panagra eliminated this possibility of competition between Pan American and Grace in western South America. One inescapable implication of the joint venture was a mutual agreement between Pan American and Grace dividing territory so that neither parent company would offer competing air transportation in the territory to be served by Panagra, and Panagra would not compete in the territory served by Pan American. There was no need to make the agreement explicit. Both

Pan American and Grace recognized its existence later on numerous occasions (see *supra*, pp. 12–13). In 1930 Pan American ordered a subsidiary to stay out of Santiago, Chile, on the ground that this was Panagra's territory (R. 512–513, 5397). Later Grace invoked the agreement to keep Pan American out of Panagra territory in western Colombia (*e.g.*, R. 545–546, 582–583, 584–586, 5397). Pan American invoked the agreement to block the extension of Panagra's routes to points in eastern South America (*e.g.*, R. 512–513, 633–634, 5396). No doubt these restrictive covenants remained implicit and therefore somewhat ill-defined until the occasion arose for their application, and this may explain the district court's finding that there was no division of territory until after Panagra had been formed (R. 5396, 5398); but there cannot be the slightest doubt that a division of territory was an inherent element of the original combination.

A combination of two powerful firms to divide territory is itself a violation of Section 1 of the Sherman Act. In *Northern Pac. R. Co.* v. *United States*, 356 U.S. 1, 5, this Court held that such divisions of markets are included among those "agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use."

The agreement was not the less unlawful because Pan American and Grace were only potential competitors in air transportation. It could readily be

foreseen that commercial aviation would develop rapidly, and each company was well suited to enter the field. Pan American had been the first United States flag air carrier not only in Latin America but in any international market; it operated between Florida and Cuba under a Post Office mail contract in 1927 (R. 5372–5373). After the passage of the Foreign Air Mail Act, it obtained a new contract for the same route (R. 2584–2588, 3565–3566) and extended its operations in Latin America by successfully bidding on various other contracts which the Post Office awarded for the carriage of mail on other and longer routes (R. 2538, 3565–3566). As Pan American put it in its brief in the district court, it "was far ahead in planning, in know-how and in the ordering of equipment" which would facilitate its successful operation of a west coast route (p. 47).

Just as Pan American was in a more powerful position with respect to the proposed west coast line in South America than any other United States airline operator, so Grace had by far the most extensive and influential American business organization in the territory to be served by the new route. Between 1851 and 1928 Grace had built up a network of some sixty agencies throughout the western countries of South America, whose activities ranged from merchandising to the representation of manufacturers, mining interests, and shipping companies, including the wholly-owned Grace Line (Grace Br. in the district court, p. 9). Grace's "established branches and agencies, * * * widespread commercial contacts, * * * respected trade name and considerable influence

in the countries along the proposed route" (R. 5391–5392) gave it a far greater likelihood of success than any other potential entrant in air transportation on the west coast except, of course, Pan American.

A merger of two such potentially strong competitors to enter a new field of commercial development is plainly an unlawful combination in restraint of trade. The Sherman Act has never distinguished "between strangling of commerce which has been born and preventing the birth of a commerce which does not exist." *United States* v. *United Shoe Mach. Co.*, 247 U.S. 32, 53. See also *United States* v. *Griffith*, 334 U.S. 100, 107; *United States* v. *Reading Co.*, 226 U.S. 324, 351, 370–371. It does not allow the foreclosure of competition by the simple device of a union of competitors before they begin actual operations. To countenance such conduct would sanction the destruction of "potential competition in a way later to make actual competition impossible." *Aluminum Co.* v. *Federal Trade Commission*, 284 Fed. 401, 408 (C.A. 3).

The district court suggested that the joint venture did not restrict competition because the Post Office Department would have given a subsidy in the form of an air mail contract to only one American carrier in western South America and such a subsidy was essential for successful operation (R. 5381–5382, 5389, 5394). But even if no actual restraint on competition resulted immediately, the division of markets was a *per se* violation of the Sherman Act going to the heart of the joint venture. Moreover, while it may be that only one of the two parent companies would have been able

to obtain a government subsidy, and hence that only one would have actually begun to operate a west coast airline in 1928, the formation of Panagra deprived the government of competitive bidding on the contract, both as to the subsidy rate itself and as to a choice of contractors. Moreover, the joint venture foreclosed the possibility of competition from the losing bidder at some future time when a subsidy would be less important. Therefore, the government's subsidy policy at that time does not disprove this serious anti-competitive consequence of the preference of Pan American and Grace for a noncompetitive joint endeavor.

The district court also suggested that the union of Pan American and Grace in forming Panagra was a "natural and mutually advantageous combination" because each partner had complementary advantages which assured the maximum possibility of success (R. 5391–5392). No doubt the combination was stronger than either would have been alone, and more powerful than any other carrier that might enter the field; but the creation of such dominant economic power by an agreement between potential competitors would seem to be, not a ground for sustaining the legality of the combination, but a further reason for holding it unlawful under Section 1. The power of a combination of potential competitors with complementary advantages would have a strong tendency to suppress the development of competition from other air carriers. For there is "no more effective exclusion than progressively to embrace each new opportunity as it opened, and to face every newcomer with new capacity already geared into a great organization, having the advantage of experience, trade connections and the elite of

personnel." *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 431 (C.A. 2).

Although one can only speculate as to what would have happened in the absence of the combination, it is noteworthy that Panagra and Pan American together dominate air passenger transportation between the United States and South America. During the period 1950–1957 they handled 50 percent of all air traffic between the United States and South America; the balance was divided among at least ten other carriers (R. 5401–5402). They carried more than 75 percent of the traffic with South America under the United States flag (R. 5400). Panagra became the dominant figure in air transportation in American foreign commerce on the west coast of South America. It participated in the carriage of almost 75 percent of all air traffic between the United States and western South America during the period 1952 to 1956, and of almost 50 percent of the total in 1957 (R. 5402). Measured by air traffic to western South America on United States flag carriers, Panagra's dominance is even more clearly apparent. The district court found that from 1950 to 1957 Panagra carried more than 80 percent of the total, and about 90 percent of that originating in the eastern United States (R. 5401).

We consider below the district court's holding that these anti-competitive purposes and consequences of the combination were justified by the fact that the parties were embarking "on a pioneering venture, useful to the community which did not theretofore exist" (R. 5392; see *infra*, pp. 69–74). First, however, we discuss the other areas in which restraints were contemplated and, later, actually enforced.

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78–81, 91–93, 106–107). Evidence was introduced before the district court showing the variety of freight which has moved to and from South America by air. Pan American, for example, has moved refrigerators and freezers from Indiana to Barbados, B.W.I. (R. 71–72); other carriers have transported sinks and cabinets from Ohio to Guatemala (R. 79–80), bricks from Missouri to Venezuela (R. 91), and onions (which previously had been carried by water) from Chile to New York (R. 104).

Census Bureau reports also make clear the wide range of commodities which are being handled by air carriers. In January 1962 the commodities imported to the United States by air from South America included leather, shellfish, cotton and wool wearing apparel, vegetable food products, wood and paper, textiles, beef and meat products, and books. Bureau of the Census, U.S. Department of Commerce, *United States Airborne General Import Statistics, Report FT 390, January 1962*, p. 8 (August 1962). Similarly, among the commodities exported to South America by air in March 1960 (the most recent period for which data is available) were bakery products, oil drilling equipment, cattle, eggs, large household appliances, television sets, office machines, automobile parts, musical instruments, kitchen and tableware, and industrial machinery parts. Bureau of the Census, U.S. Department of Commerce, Release dated November 10, 1960, pp. 7–8.

There is every reason to believe that the opportunities for competition between air and sea carriage will increase, thus magnifying the anti-competitive effects

of the combination. As we have shown, the volume of air cargo is growing rapidly. Indeed, the court below agreed that the evidence "tending to show that the air cargo field, particularly as it relates to heavy cargo, is on the upswing" (R. 5428). Moreover, the utilization of equipment designed to meet the problems encountered in handling air freight will reduce the carriers' costs to a substantial degree, thereby making a wider range of businesses which presently ship by sea into potential customers of an airline (R. 149–153).[19] This potential sphere of competition between Grace and Panagra is no less important than the portion of the market in which they should now be competing independently.

(iii) *Recognition by Congress and Administrative Agencies of Competition between Air and Sea Transportation.*—The existence of a single transportation market, in which both air and water carriers participate has been recognized by Congress in a variety of regulatory statutes and by the administrative agencies which interpret the legislation. Congress has provided that the administrative agencies regulating the various modes of transportation can grant exemption from the antitrust laws (see, *e.g.*, 46 U.S.C. 813 (ship-

[19] Pan American has recently instituted a major advertising campaign to attract air cargo business on the strength of the radically increased capabilities of such new equipment. The campaign stresses the gains to be made in speed ("45% faster than any other commercial cargo planes flying"), range (more than 25% greater than the best aircraft now in use), and payload capacity ("25% greater cargo capacity than any commercial cargo planes now available"). *Washington Post*, June 29, 1962, p. B11, cols. 6–8.

entry into the market (and Delta's too), and prior to the Through Flight operations, Pan American enjoyed a virtual monopoly of the United States-South American market." (R. 5405–5406).

The record amply supports the finding. Pan American used its negative control over the Panagra Board of Directors to block Panagra's applications to the Civil Aeronautics Board for an extension to the continental United States. As the district court found, Pan American refused from the beginning of the Board's existence to allow the joint company to request a route to the mainland (R. 5410). The very basis of its opposition was the effectiveness of the competition which Panagra would offer for traffic between the United States and points on the west coast of South America (R. 5405). The matter came to a head when Pan American refused even to allow Panagra board meetings to discuss the question of an extension, in the face of an application from another carrier for a route between New Orleans and the Canal Zone which might have led to a new route on the west coast of South America in competition with Panagra (R. 5410). Grace then sought to apply in Panagra's behalf for the extension which Pan American so vehemently opposed.[15] While the application was pending, a route from the United States to South America was awarded to Braniff, which threatened new competition. Thereupon the Panagra litigation was quickly settled by the adoption of the through flight agreement. That agreement was a

[15] The course of the proceedings before the Board is set out in more detail in the Statement, pp. 14–16 above.

direct response to the impending competition of Braniff; it was not intended to solve, nor did it solve, the underlying problems created by the cross-purposes of Grace and Pan American respecting the role of Panagra (R. 5414). Since 1946 Pan American has seized upon the through flight agreement as the rationale for its continued opposition to the establishment of a United States terminal for the joint company, advancing it as the considered solution of the parties and the Board to the question of Panagra flights to the United States (R. 5416). There can be no question but that the extension of Panagra to a mainland gateway would be consistent with the Federal Aviation Act and in the best interests of the United States. The Civil Aeronautics Board has suggested its approval of the extension on several occasions and has also deprecated the impasse in Panagra's affairs that enabled Pan American to block the application. *E.g., Additional Service to Latin America*, 6 C.A.B. 857, 914.

On these facts the district court concluded that Pan American had used its power over Panagra to "'maintain its virtual monopoly position over that [United States-South American] market at least until the entry thereinto of Braniff in 1948" and "[remain] the dominant carrier in that market and [maintain] its power to participate in substantially all United States origin or destination traffic carried by Panagra" (R. 5404).[18] Taking into account "the nature of the indus-

[18] Pan American, of course, receives a substantial percentage of Panagra's revenue from flights to the United States under the through flight agreement (R. 1871–1874, 1879–1883).

As early as 1936 Panagra and Grace found themselves in competition for cargo traffic consisting of gold and platinum shipments to the United States (R. 986–991, 995–1003). While some shipments were ultimately carried by water and others by air, the choice seems to have largely been dictated by the comparative rates (see, *e.g.*, R. 987–988, 1002). When the air cargo rate was set at a level lower than the water rate itself, or even at some higher rate which preserved for the shipper the cost savings inherent in faster transportation, so that the total cost of movement was below the cost via water, Panagra was able to attract the traffic (R. 990, 991, 996, 998–999). And while this particular instance concerns commodities of extremely high value, it illustrates the cross-elasticity of demand between water and air transportation which is manifested by responsive shifts in demand when the rate differential between the two modes of transportation changes.

In recent years the role of air cargo has continued to expand, particularly in the international field. Carriers certificated by the Civil Aeronautics Board have increased their international freight and express business from less than 9 million revenue ton-miles in 1945 to 214 million revenue ton-miles in 1957, the last year for which data was introduced at trial, and to almost 308 million revenue ton-miles in 1961. CAB, *Monthly Report of Air Carrier Traffic Statistics* 54 (December 1961); CAB, *Handbook of Airline Statistics*, p. II–24 (1961). Similarly, the annual growth rate of international air cargo carriers generally, while not constant, has been substantial for every not-

recession year since World War II but one, *Id.* at p. II–25.

Panagra's role as a cargo carrier has become increasingly significant. Its freight business almost doubled between 1951 and 1957, the last year for which data was presented at the trial. CAB, *Handbook of Airline Statistics,* p. III–87 (1961). Since then, the volume has almost doubled again, reaching a figure of more than 8 million revenue ton-miles in 1961. CAB, *Monthly Report of Air Carrier Traffic Statistics* 62 (December 1961). These totals hardly are "minuscule" as the court below called them (R. 5428). Grace and Panagra are plainly in competition for this substantial traffic; if there were no air transportation available it would unquestionably move by water, and only Panagra's competitive advantage can account for its movement by air (see R. 972). Moreover, the record is replete with testimony from witnesses engaged in the air cargo business that they find themselves actively competing with water carriers for the carriage of a variety of commodities (*e.g.*, R. 68–74, 78, 91).

Contrary to the statement of the district court (R. 5428), the opportunities for competition between Panagra and Grace for cargo are not limited to items for which the cost of transportation is relatively insignificant. The record shows that even where transportation expense is a major component of product cost, air transportation may still be competitive with surface carriage because it avoids multiple handling, overland hauling between seaports and the interior, and costly packaging and warehousing (R. 68–74,

merce already discussed with an equally serious restraint on competition between sea and air transportation. And, as we shall show, the latter form of competition has in fact been suppressed.

Since the district court held that sea and air carriage "do not make up a single market" (R. 5428) in which competition can be restrained, we direct ourselves first to the definition of the market.

a. The relevant market includes all forms of commercial transportation

Air and sea transportation are the two dominant forms of transportation for the foreign commerce of the United States with the west coast of South America. The question is whether the "outer boundaries" of the market encompass both modes. As the Court ruled in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325, "[t]he outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." The evidence before the district court showed a reasonable interchangeability of use, or cross-elasticity of demand, between air and water transportation which is more than adequate to establish transportation generally between the United States and western South America as the relevant product market in which the effect of Grace's control of Panagra is to be measured.

(i) ***Passengers.***—For passengers traveling between the United States and western South America sea and air travel are reasonably interchangeable modes of transportation, with a substantial cross-elasticity of demand. Proof of an unlawful restraint does not

require a showing of cross-elasticity and interchangeability in all cases; hence, it is not decisive that to some passengers time is so important that air travel is in a class by itself. The illegality of a horizontal merger, for example, does not depend upon a showing that the merged companies are competitive in all their activities. *Brown Shoe Co.* v. *United States, supra,* 370 U.S. at 337. Cross-elasticity may be measured by the correlation between (a) changes in price differentials and (b) shifts in demand from one product to another. *United States* v. *E. I. du Pont de Nemours & Co.,* 351 U.S. 377, 400. To the extent, therefore, that there are shifts in customer preferences between air and water transportation in response to changes in passenger fares, there is cross-elasticity. Here, the record shows that sea and air transportation are competitive as to a substantial amount of commerce.

The history of air traffic has been one of competitive struggle between air and other modes of transportation to provide the speediest service, the lowest fares, and the greatest comfort and economy. As a result of these efforts, the air carriers' share of passenger traffic to South America has risen from only one-half of one percent in 1931 to almost 84 percent in 1957 (R. 1359). If sea carriers are desirous of retaining a share of the total passenger traffic, they must likewise lower fares and develop other attractions to compensate for lack of speed. The interplay between these two opposing modes of transportation is competition in a very real sense. The process of promoting and developing alternative modes of transportation is the

result of the competitive process, and requires freedom from the divided loyalties inherent in the Grace-Panagra relationship.

The district court stated that air carriers cater to passengers seeking speed, while steamship companies cater to those who have leisure (R. 5428). But the two classes of passengers are not so easily separated. Pan American's expert witness testified that more than one-half of all air passengers to South America travel for non-business reasons (R. 257, 272). As to these passengers, it is clear that the sea carriers have alternatives to offer which may more than compensate for the speed of an air trip.

The Court of Appeals for the District of Columbia Circuit decided in *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289, certiorari denied, 347 U.S. 916, that air and water carriers compete in the same market for passenger traffic. The court upheld an order of the Civil Aeronautics Board which applied Section 409 of the Civil Aeronautics Act, 52 Stat. 1002,[18] to deny a Pan

[17] The district court's conclusion (R. 5429) that Grace, being primarily a cargo carrier, does not compete with Panagra for passengers, is plainly erroneous. The court based its view on its finding that Panagra carries 25 times as many passengers to South America as Grace does (R. 5427–5429). Most of the Panagra passengers involved in that comparison, however, were to Buenos Aires and Montevideo, which are not served by Grace (R. 5427). The record shows that Panagra carries about 1,100 and Grace about 315 persons per month between the areas served by both carriers (R. 1433–1435); on this basis it appears that Panagra carries only about three and one-half times as many passengers as Grace.

[18] Section 409 prohibited interlocking directorates and managements between air carriers on the one hand and other common carriers or aeronautics corporations on the other. The identical prohibition is now found in section 409 of the Federal Aviation Act, 49 U.S.C. 1379.

American director the right to become a director of United Fruit Co., a common carrier by water to eastern South America. Rejecting Pan American's contention that "the difference between a leisurely sea voyage * * * and a fast air trip * * * eliminates the element of competition" between the two carriers, the court of appeals found that they competed by offering different types of service in order to attract traffic. *Id.* at 291–292. "The prospective travelers cannot be isolated into two groups the members of each of which must be assumed to have determined the kind of transportation they will use, or the kind of vacation they will choose, without considering an available alternative." *Id.* at 292.

Similarly, the Court of Appeals for the Second Circuit in *United States Lines Co. v. Civil Aeronautics Board*, 165 F. 2d 849, sustained an order of the Board which disapproved Pan American's retention of United States Lines as its general agent in Europe. The court found that the water carrier was "in a competitive position" with Pan American, and that the Board was therefore justified in fearing failure "in diligence or loyalty." *Id.* at 852.

(ii) *Freight.*—Air and water carriage are also "reasonably interchangeable" methods of transporting freight. The district court's contrary conclusion (R. 5428) is clearly in conflict with the history of Panagra and the present characteristics of the air cargo industry generally, which show that air carriers are in a constant and continuing struggle to wrest portions of the market from water carriers.

try, the size and strength of the two companies involved, and the limited market potential" (R. 5408), the court properly held that the exclusion of "the most potential of a very limited number of competitors and one that enjoys a substantial share of the relevant market, and in which share the exclusionary action * * * guar-States-South American] market at least until the entry antees [the excluder] participation" (*ibid.*) constitutes monopolization or attempted monopolization in violation of Section 2 of the Sherman Act.

The decisions of this Court have made plain that the power to exclude competitors is monopoly power, and that the acquisition, maintenance, or exercise of monopoly power constitutes illegal monopolization under Section 2 of the Sherman Act. *E.g., American Tobacco Co.* v. *United States*, 328 U.S. 781; *United States* v. *Griffith*, 334 U.S. 100. In the case at bar Pan American exercised its power over Panagra to exclude the direct competition of the only company which could provide an effective challenge to Pan American dominance of the United States-Canal Zone segment of the South American trade. Its market share of more than 80 percent was thereby secured from attack. The district court was clearly correct, therefore, in holding that Pan American was guilty of monopolization in violation of Section 2. See *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 424 (C.A. 2).

The district court erred, however, in failing to hold that the union of Pan American and Grace in Panagra was itself an illegal combination from the outset, in violation of Section 1 and 3, because it was this

combination that conferred on Pan American the power to monopolize in violation of Section 2. See *American Tobacco Co.* v. *United States, supra,* 328 U.S. at 809. Thus, Pan American's conduct with respect to air transportation between the United States and the Canal Zone reinforces our more general conclusion that the basic arrangement was an unreasonable restraint of trade in violation of Sections 1 and 3. For monopolization is the ultimate restraint of trade. *Standard Oil Co.* v. *United States,* 221 U.S. 1, 55–56; *United States* v. *Aluminum Co. of America, supra,* 148 F. 2d at 427–428.

4. The combination tended to suppress, and in operation has actually suppressed, competition between air and sea transportation in U.S. foreign commerce with western South America

Although the protection of Pan American's individual interest as an air carrier, and its avoidance of competition in carrying American foreign commerce between continental United States and South America, and between South American points, were major objectives and consequences of the combinatio. a no less important objective was the protection of Grace's interest in water transportation When Panagra was formed, Grace was the largest steamship company operating between the United States and western South America (R. 5429). Panagra had such inherent advantages that it was bound to become the dominant air carrier serving the same areas. The natural tendency, if not the inevitable result, of the combination of these dominant sea and air carriers, would be to couple the restraints upon competition in air com-

ping); 49 U.S.C. 5(11) (railroads)). In conferring this authority on the administrative agencies, Congress made clear its awareness of the damaging consequences of allowing a carrier engaged in one mode of transportation to obtain control of a carrier by another, for the prohibitions and restrictions that Congress imposed are obviously predicated upon the view that rail, water, motor, and air carriers are, in general, all in competition with each other.

Section 5(14) of the Interstate Commerce Act, 49 U.S.C. 5(14), as amended by the Panama Canal Act, 37 Stat. 566, as amended, prohibits rail carriers from owning or otherwise controlling, or from having any interest whatever, in any water common carrier with which the rail carrier "does or may compete for traffic." Relief from the prohibition can be obtained only upon a finding by the Interstate Commerce Commission that the resulting interlock does not prevent operation of the water carrier in the public interest "and with advantage to the convenience and commerce of the people, and that it will not exclude, prevent, or reduce competition on the route by water under consideration." Section 5(16), 49 U.S.C. 5(16).

Similarly, the Motor Carrier Act of 1935, 49 Stat. 543, established a special test for the lawfulness of a railroad's acquisition of motor common carriers. In Section 213(a)(1), as amended, 49 U.S.C. 5(2)(b), the Interstate Commerce Commission is directed to deny approval unless "it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle

to public advantage in its operations and will not unduly restrain competition."[20]

The policy of the Motor Carrier Act has been explicitly carried over into the regulation of air transportation by Section 408 of the Federal Aviation Act of 1958, 49 U.S.C. 1378. That section allows surface carriers to merge with, or acquire control of, any air carrier only with the approval of the Civil Aeronautics Board on the basis of a finding that the interlock is consistent with the public interest, will not unduly restrain competition, and will enable the surface carrier "to use aircraft to public advantage in its operation * * *." The proviso has been described as making "acquisitions of air carriers by water carriers difficult, if not practically impossible * * *." Fulda, *Competition in the Regulated Industries* 421 (1961). The Aviation Act, moreover, contains other examples of Congressional disfavor towards surface carrier control of air carriers: Section 407, 49 U.S.C. 1377, requires the disclosure of stock or other interests held by an officer or director of an air carrier "in any common carrier," while Section 409, 49 U.S.C. 1379, requires approval by the Board of interlocking officerships or directorates between air carriers and other common carriers.

The National Transportation Policy, and the rules of ratemaking through which it is implemented, also

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[20] Further evidence of the legislative recognition of the problems raised by control of one mode of transportation by another is found in Section 411 of the Freight Forwarder Act of 1942, 49 U.S.C. 1011, which prohibits forwarder control of rail, motor, or water common carriers. See also *National Air Freight Forwarding Corp.* v. *Civil Aeronautics Board*, 197 F. 2d 384, 388, 390 (C.A. D.C.).

> * * * It would be expecting too much to assume that a transportation company engaged in both air and sea transportation would be in a position to provide vigorous competition between its air transportation and its surface transportation on this route. * * * Here we find revealed an inherent conflict of investment interests which frequently arises where the same company undertakes different business activities. Any assumption that an automatic competition between two forms of transportation, conducted by the same management and operating over the same route, could develop would be an assumption at war with the realities of business experience and of human nature. * * * We believe, therefore, that the maximum development of air transportation on the proposed route cannot be assured under a plan which carries the inherent danger, in the event of a conflict of interest, that the air transportation may find itself a captive of the surface transportation interests.

(iv) *Recognition by the Parties of Competition Between Air and Sea Transportation.*—This Court stated in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325, that industry recognition of the appropriate market was important evidence of its actual scope. The record shows that both Pan American and Grace considered the area of competition in western South America to include both air and sea transportation. Pan American's treasurer testified on cross-examination that air and sea carriers to South America are "[v]ery definitely" in competition for passengers and "are both trying to get the same market" (R. 229). Similarly, Grace has always candidly admitted that "Panagra is a direct competitor of the Grace line,"

and that Panagra's development had resulted "in prejudice to the Grace line" (R. 1027). One of Grace's highest officers wrote that he "appreciate[d] the fact that steam and air traffic are competitors, but * * * believe[d] that by handling the whole matter * * * [properly] we may avoid the prejudice of competition * * *" (R. 970). Grace recognized that the competition between Panagra and Grace for gold and platinum shipments (see *supra*, p. 52) was an incident "involving a conflict of interest between Panagra and the Grace Line" (R. 1003; see also R. 995, 1041–1042, 1048). Indeed, as the court below found (see *supra*, pp. 31–32), Grace was largely motivated to join in the formation of Panagra by its recognition that airplanes "will be a real competitor of our steamers" (R. 966; see R. 968). We think it plain that an independent air carrier, the kind of company whose activities Grace feared, would have been and still would be an effective competitor in the very market, transportation to western South America, in which Grace itself operated.

b. The combined ownership of air and sea transportation services through Grace's stock interest in Panagra was and is unlawful under Section 1 of the Sherman Act

The decisions of this Court make clear that, since Grace and Panagra are in competition in the same market, Grace's control of Panagra violates Sections 1 and 3 of the Sherman Act. Even prior to this Court's decision in *United States* v. *Columbia Steel Co.*, 334 U.S. 495 (which we will discuss below), it was settled that the kind of horizontal merger which is involved in Grace's control of Panagra was illegal. The Court had repeatedly held that a horizontal merger is unlawful when it involves competitors who are both major

make it clear that Congress, recognizing that the various modes of transportation operate in a single market, intends them to be competitive and independent of the restraints which may flow from control of one mode by another. The National Transportation Policy, 49 U.S.C. preceding Section 1, commands the Interstate Commerce Commission to "recognize and preserve the inherent advantages of each" mode of transportation. This requirement is echoed in the Aviation Act's declaration that the Board should consider "the regulation of air transportation in such manner as to recognize and preserve the inherent advantages of * * * such transportation," as being in accordance with the public interest and necessity. 49 U.S.C. 1302. And Section 15a(3) of the Interstate Commerce Act, 49 U.S.C. 15a(3), recognizes the existence of "competition between carriers of different modes of transportation" and prohibits the Interstate Commerce Commission from holding up the rates of one mode to protect the traffic of another.

It is obvious from these statutes that Congress is opposed to concentration of control of different modes of transportation in the hands of a few powerful companies. The statutes are based upon the view that the relevant competitive market is the entire field of commercial transportation within a particular area. The agencies to which the administration of these statutes has been entrusted have recognized the detriment to the public interest flowing from control over one mode of transportation by another. As the Civil Aeronautics Board said in discussing surface

carrier control of air carriers (*American President Lines, Ltd.*, 7 C.A.B. 799, 803):

> Surface carriers engaging in air transportation would at times be under a strong incentive to act for the protection of their investment in surface transportation interests. Again, by reason of their superior resources and extensive facilities for solicitation, such carriers would often be the possessors of powerful competitive weapons which would enable them to crush the competition of independent air carriers. This threat is not peculiar to air transportation, as will be apparent from those decisions of the Interstate Commerce Commission which have sought to safeguard the development of motor transportation against the unrestricted entry of rail carriers into the motor carrier field.

This view is plainly relevant to the question whether Grace's control of Panagra violates the Sherman Act by reason of the restraint of present and potential future competition between the two companies. Indeed, Grace itself has been denied authority to operate an airline to Latin America upon this precise ground (*Additional Service to Latin America*, 6 C.A.B. 857, 903–904):

> It can hardly be doubted that an indifference on the part of management to the question of whether a prospective traveler uses the company's boats or its airplanes would not be consistent with the fullest development of the potential air travel market. The proposed combined air-sea service would seek the sale of air transportation on the plan of "one way by air—one way by boat." • • •

western South America, besides Panagra and Grace, is Braniff, whose share of the air cargo and passenger traffic is carried under the American flag is less than one-sixth. The district court found that Braniff "does more than half as much business as Panagra" (R. 5432). If we assume that this statement is correct—in fact it considerably overstates Braniff's share of the traffic [21]—it means merely that Braniff does only one-third of the combined business of the two airlines, by no means enough to excuse control of the other two-thirds by the dominant surface carrier in the same market. And Braniff's market share is even less significant when compared with the cargo and passenger business of Grace and Panagra together.[22]

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[21] The record actually shows that in 1957 Panagra carried 79.6 percent of the United States flag air passenger traffic between the United States and western South America, while Braniff obtained only 15.8 percent of the total (R. 1367). Similarly, in that year Braniff carried only 871,000 ton-miles of freight and express, while Panagra's business amounted to almost 4.5 million ton-miles (R. 1438)—more than five times as much as Braniff's.

[22] Grace is the only regularly scheduled United States flag water carrier between the eastern United States and western South America. Hence the percentage of cargo carried on United States flag ships and planes between these areas carried by Panagra and Grace together is overwhelming. For the district court found that between 1950 and 1958 Panagra carried less than four-tenths of one percent of the tonnage carried by Grace (R. 5427); assuming that Braniff's volume of traffic bore the same relation to Panagra's during this period as in 1957 (see *supra*, note 21), Braniff obtained substantially less than one-tenth of one percent of the cargo moved by the three carriers. And while Braniff's share of the three carriers' passenger traffic is not so strikingly small as its share of cargo, it amounts to only 13 percent of the total.

Third, under *Columbia Steel* (*supra*, p. 63), we are to inquire "whether the action springs from business requirements or purpose to monopolize." Here, one purpose of Grace's venture, as the district court found (R. 5388–5389), is to foreclose independent air competition with its shipping interests on the west coast of South America.

Fourth, looking to "the probable development of the industry," the record in this case shows quite clearly that air carriers can secure an increasing share of freight transportation. Grace's control of Panagra during this period of growth would enable it to continue to hinder the development of competition with Grace's steamship operations, whenever Grace's interests require. And the continued Grace control of Panagra will result in the extension of Grace's dominance over water carriage in western South America to air transportation in that area as well. For Panagra's rights under the "grandfather" provisions of the Aviation Act insure that it will continue to dominate United States flag air operations on the west coast of South America. As long as Grace retains its 50 percent stock interest in Panagra, therefore, its power over United States flag transportation in that area will remain despite the growth of what should be its principal competitor—the dominant American air carrier in the same geographic market.

Fifth, it is clear that the needs of shippers are best served by real competition between sea and air carriers. Such competition may well result in the reduction of air cargo rates and improved service which would make air transportation competitive with sea

factors in the same market. In *Northern Securities Co.*, v. *United States*, 193 U.S. 197, *United States* v. *Union Pac. R. Co.*, 226 U.S. 61, and *United States* v. *Southern Pac. Co.*, 259 U.S. 214, combinations of two large railroads were struck down, notwithstanding that in each case the merged company would have faced competition from other rail carriers not parties to the combination. The illegality in each case resulted from the fact that the merger eliminated competition between large enterprises, each doing a substantial proportion of the total business in a field. See Handler, *A Study of the Construction and Enforcement of the Antitrust Laws*, p. 58 (TNEC Monograph No. 38). The case at bar presents a similar violation of the Sherman Act. A "joint venture" is nothing but a partial merger of those of the venturers' assets which are utilized in the joint endeavor. See Bork, *Ancillary Restraints and the Sherman Act*, 15 A.B.A. Antitrust Section 211, 217; cf. Brewster, *Antitrust and American Business Abroad* (1958), pp. 211–212. Pan American and Grace are extremely large transportation companies; at the time they formed Panagra, the former was emerging as the dominant American air carrier in South America and, in fact, the largest in the whole world; the latter was the dominant steamship company in western South America. The two companies, realizing that transportation between the United States and western South America constituted a single market in which air and sea carriers would soon compete, formed a joint venture, Panagra, to prevent competition between themselves. While the restraint was, at first, upon potential rather than actual competition, we have seen that this fact is of no

importance (see *supra*, pp. 35–37). The competition between sea and air carriers since the formation of Panagra shows how great the opportunities for competition between two really independent firms were, and still are.

Turning to the standards more recently laid down by this Court in *United States* v. *Columbia Steel Co.*, *supra*, 334 U.S. 495, it is even more clear that Grace's 50 percent interest in Panagra violated the Sherman Act. Each of the five considerations which the Court there listed as relevant to the issue of unreasonable restraint—"the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands" (334 U.S. at 527)—indicates that Grace's control of Panagra cannot stand.

First, "the percentage of business controlled" by the two carriers is extremely high. Grace was the dominant surface carrier to the west coast of South America at the time of Panagra's formation and is still dominant today. Grace carries 100 percent of the liner traffic to and from that area which moves under the United States flag (see *supra*, p. 7). Panagra was destined to become and still is the dominant air carrier in that area. Panagra carries 80 percent of the air passengers to and from that area traveling under the United States flag (see *supra*, pp. 5–6). The combination put into the hands of Grace substantially all of the opportunities for air and sea competition in commerce between the United States and the west coast of South America.

Second, "the strength of the remaining competition" is small. The only United States flag carrier to

carriage on an increasing variety of goods (see *supra*, pp. 54–55).

Thus, under the principles set out in *Columbia Steel*, the union of Grace's steamship interests with the potentially (and later actually) dominant air carrier, through Grace's 50 per cent control of Panagra, was sufficient, quite apart from the other anti-competitive aspects of the combination, to constitute an unreasonable restraint in violation of Sections 1 and 3.

B. THE SUBSTANTIAL RESTRAINTS OF TRADE AND COMMERCE BY PAN AMERICAN AND GRACE CANNOT BE JUSTIFIED BY THEIR BUSINESS PURPOSES OR ALLEGED CONTRIBUTIONS TO THE NATIONAL INTEREST

The district court found that Pan American and Grace formed Panagra and agreed to a division of territories and commercial interests in order to protect themselves from competition, but the court concluded that there was no "conspiracy"[23] violating the Sherman Act because of two allegedly beneficent consequences of the combination: (1) it fostered the development of American air transportation in accordance with the policy of the Post Office Department and (2) it brought together two companies having complementary advantages that assured "the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist" (R. 5392). We submit that neither of the proffered justifications excused the imposition of these major restraints on competition.

[23] See *supra*, p. 30, note 13.

1. The combination is not saved from illegality by the policies of the Post Office Department

We do not challenge the district court's finding that the formation of Panagra was consistent with the air transportation policy expressed by the Post Office Department at a time when it was following a " 'no-parallel' policy" and "approving a sort of 'zoning' for the operations of the American international carriers in the nature of east and west coast spheres as was ultimately arranged between" Pan American and Grace (R. 5395). The finding is irrelevant. In the first place, there is nothing in the finding nor in the evidence that even remotely suggests (1) that the policy favored giving the carrier which would dominate commerce with the east coast control over the carrier to the west coast; (2) that it favored, or even permitted, combining air and water transportation under common control; or (3) that it permitted the kind of continuing arrangements which would project restraints upon competition and monopoly power into the indeterminate future. In other words, the policy of the Post Office Department to foster the development of a single American company in carrying the United States mail to western South America could have been fulfilled without any of the inherent restraints created by the formation of Panagra; and it was a policy subject to termination whereas the restraints effected by the parties would continue and intensify so long as Panagra remained in the control of the parent companies.

Second, violations of the Sherman Act cannot be excused by the argument that the conspirators were following a policy expressed by some government agency. In *United States* v. *Socony Vacuum Oil Co.*, 310 U.S. 150, the defendants urged that N.R.A. officials had known of their scheme to put a floor under wholesale oil prices and stabilize the retail profit margin on gasoline, and had at least "acquiesced" in its operation. *Id.* at 201–208. The Court held that "specific Congressional authority" is required for exemption from the antitrust laws, and that to allow immunity to be conferred outside the scope of a clear and explicitly defined mechanism would allow "national policy on such grave and important issues as this [to] be determined not by Congress nor by those to whom Congress had delegated authority but by virtual volunteers." *Id.* at 227. See also *United States* v. *Borden Co.*, 308 U.S. 188, 198–199. Whatever the Postmaster General's air transportation policy in 1929 may have been, it is clear that no authority was ever conferred upon him to grant immunity from the antitrust laws in the administration of the Foreign Air Mail Act.[24]

[24] Thus, the district court plainly erred in holding that the "agreements [of Pan American and Grace] among themselves * * * may well have been approved by the C.A.B. were it then in existence" (R. 5391), and that therefore the division of territories was legal throughout the period before enactment of the Civil Aeronautics Act in 1938. While the Aeronautics Act was not then in effect, the Sherman Act was, and the court's holding amounts to a retroactive grant of exemption from the antitrust laws with no legislative sanction whatever.

[Footnote continued on next page]

2. The combination is not saved from illegality by the beneficent purposes mingled with the parties' unlawful intent

The district court found that among the motives for the formation of Panagra was the desire of both Grace and Pan American to protect themselves against competition in transportation between the United States and South America under the United States flag. The court concluded, however, relying on *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 280 (C.A. 6), modified and affirmed, 175 U.S. 211, that the combination was not unlawful because it also had a legitimate purpose: "The union of [Pan American and Grace's] physical and technical resources assured the maximum possibilities of success

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Indeed, the district court itself recognized elsewhere in its opinion that "[e]xemptions from the antitrust laws are not favored and should be accorded only on a showing of compliance with the precise manner and method prescribed by Congress" (R. 5418). For want of such a showing, the court rejected Pan American's claim of immunity under Section 414 of the Civil Aeronautics Act, 52 Stat. 1004, and of the Federal Aviation Act, 49 U.S.C. 1384—which allow the Board to grant exemptions from the antitrust laws—for its exclusion of Panagra from the United States (R. 5416).

Perhaps in recognition of its refusal to accept Pan American's claim of immunity with respect to the exclusion of Panagra from the United States, the district court did not attempt to defend the division of territories by reference to Board policy since 1938. The same absence of compliance with a statutory exemption process which left the Panagra exclusion vulnerable to antitrust attack would clearly negate any defense of the territorial allocation for the period since 1938 based upon its alleged consonance with regulatory policy. See *Isbrandtsen Co.* v. *United States*, 211 F. 2d 51 (C.A. D.C.), certiorari denied *sub nom. Federal Maritime Board* v. *United States*, 347 U.S. 990.

in instituting and carrying on a pioneering venture, useful to the community which did not theretofore exist" (R. 5392). We submit that the ruling was erroneous upon several independent grounds.

It is settled law that neither businessmen nor the courts may substitute their views of the public interest for the policy expressed by Congress in the Sherman Act; antitrust violations may not be excused as "promotive of the public welfare * * * and private choice of means must yield to the national authority thus exerted [in antitrust legislation]." *Eastern States Retail Lumber Dealers' Ass'n* v. *United States*, 234 U.S. 600, 613. Similarly, in *Standard Sanitary Mfg. Co.* v. *United States*, 226 U.S. 20, 49, this Court said that the "judgment of the courts cannot be set up against [the Sherman Act] in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results." See also *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207, 211; *Radovich* v. *National Football League*, 352 U.S. 445, 453; *United States* v. *Line Material Co.*, 333 U.S. 287, 310.

This Court has made it particularly clear that division of markets, price-fixing, and similar *per se* violations of the Sherman Act cannot be justified because of any good effects which they may have. In *Northern Pac. R. Co.* v. *United States*, 356 U.S. 1, 5, the Court said, as we have emphasized above, that such arrangements are among those "agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable

and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." Similarly, in *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 220, the defendants sought to justify their price-fixing scheme as one which resulted in "[f]airer competitive prices." Rejecting this defense, the Court held that "Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. * * * Whatever may be [the oil industry's] peculiar problems and characteristics, the Sherman Act, so far as price-fixing agreements are concerned, establishes one uniform rule applicable to all industries alike." *Id.* at 221–222.

The same rule equally proscribes all market divisions, for, like the group boycott (see *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U.S. 457, 467–468), these go beyond price-fixing in their pernicious effect on competition and eliminate not merely price rivalry but all other forms of competition as well. Particularly is this true when, as here (R. 410–416, 5389, 5429), the parties to the agreement possess substantial or even dominant market power—whether derived from existing resources and previous experience, as with Pan American and Grace, or from governmental protection against outside competition, as with both Pan American and Panagra. For in such cases, there is small chance that others will enter the market and thus mitigate the effect of the elimination of competition between the parties.

the combination unlawful. The existence of the tendency has been confirmed by events.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the district court insofar as it orders the divestiture of Pan American's interest in Panagra (No. 23) should be affirmed, and insofar as it fails to order the divestiture of Grace's interest in Panagra (No. 47) should be reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 47

UNITED STATES OF AMERICA,
Appellant,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., and PAN AMERICAN-GRACE AIRWAYS, INC.,
Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR RESPONDENT PAN AMERICAN WORLD AIRWAYS, INC.

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Many of the restraints inherent in the combination between Grace and Panagra are *per se* violations of Section 1. In *Timken Roller Bearing Co.* v. *United States,* 341 U.S. 593, this Court laid to rest the notion that the division of markets and like restraints may be lawful if the corporation has a purpose to conduct a "joint venture" or the like. The Court first observed that it was "to say the least, doubtful" whether the division of territories, price fixing, cooperative market protection, and cartel participation by American Timken, British Timken (30 per cent of whose stock was owned by American Timken), and their jointly-owned subsidiary French Timken, was "merely incidental" to a joint venture, since the court below had found that the parties' "dominant purpose" was to avoid competition among themselves and with outsiders (*id.* at 597–598). But, significantly, the Court went on (*id.* at 598):

> Regardless of this, however, [Timken's] argument must be rejected. Our prior decisions plainly establish that agreements providing for an aggregation of trade restraints such as those existing in this case are illegal under the [Sherman] Act. *Kiefer-Stewart Co.* v. *Seagram & Sons,* 340 U.S. 211, 213; *United States* v. *Socony-Vacuum Oil Co.,* 310 U.S. 150, 223–224 and note 59; *United States* v. *National Lead Co.,* 63 F. Supp. 513, affirmed 332 U.S. 319; *United States* v. *American Tobacco Co.,* 221 U.S. 106, 180–184; *Associated Press* v. *United States,* 326 U.S. 1, 15. See also *United States* v. *Aluminum Co. of America,* 148 F. 2d 416, 439–445.

In *Addyston Pipe* itself, the Court recognized that the sort of "ancillary restraint" here involved was

per se unlawful, when it observed that the Sherman Act would be violated regardless of the intent of the parties if "dealers in any commodity agreed among themselves that any particular territory * * * should be furnished with such commodity by certain members only of the combination, and the others would abstain from business in that territory." 175 U.S. 211, 241. That the chosen means of exploiting the assigned territory is a "joint venture" rather than some other instrument is not significant. *Timken Roller Bearing Co.* v. *United States, supra,* 341 U.S. at 598. Thus, it appears that under the decisions of the Court the division of markets in this case could not be excused even if the only purpose of the combination were to exploit the west coast market; here, as the district court found, that purpose was coupled with an intent to protect Pan American's interests on the east coast and Grace's investment in transportation by water.

Where, as here, one of the purposes of an arrangement restricting competition is illegal, the illegality of the combination is plain; the unlawful motive need not be its "primary purpose." Thus, in *United States* v. *Imperial Chemical Industries, Ltd.,* 100 F. Supp. 504, 518 (S.D. N.Y.), the court held that a patent interchange agreement was illegal on the ground that "[s]o long as *a major purpose* of the agreement was an illegal one, a complementary legitimate purpose does not immunize the parties from Anti-Trust prosecution" (emphasis added). And the court in *United States* v. *National Lead Co.,* 63 F. Supp. 513, 524 (S.D. N.Y.), affirmed, 332 U.S. 319, found illegal a patent cross-li-

censing arrangement which effected a division of markets, on the ground, *inter alia,* that the elimination of competition was "at least one of the principal" objectives of the defendants. Here, as the district court itself found (see *supra,* pp. 31–32), one of the main objects of the joint venture as a whole and the division of markets in particular was to restrict competition. The elusive "primary intent" of the parties, Pan American and Grace, cannot be allowed to obscure their plain violation of the Sherman Act.

Even if the *per se* rule were held inapplicable to the present case, the combination of Pan American and Grace in Panagra must be held an unreasonable restraint of trade within the rule laid down in *Standard Oil Co.* v. *United States,* 221 U.S. 1. Earlier in this brief we discussed separately each of the major restraints upon competition in foreign trade and commerce that was inherent in, and actually resulted from, the combination of Pan American and Grace. Some of the separate anti-competitive aspects of the combination, we submit, would be sufficient to condemn it under Sections 1 and 3 even if each stood alone. But even if we are wrong on that point, the separate restraints cannot fairly be broken down, considered, and dismissed in isolation. The combination did not merely tend to suppress, and actually suppress, competition between air carriers seeking to carry passengers and freight in American foreign commerce in western South America. It also tended to suppress,

and actually suppressed, competition between air carriers in eastern South America, especially of traffic moving from the continental United States or the Canal Zone to Buenos Aires. In addition, the combination was intended to and did enable Pan American to monopolize air commerce between continental United States and the Canal Zone. Still further, the combination brought into the hands of Grace a controlling interest in both air and sea transportation between the United States and western South America, thus suppressing competition between these forms of transportation. The cumulative impact of these restraints is too great to save the combination from illegality by proof that its promoters also carried out a beneficent intent.

This is not an argument from hindsight unmindful of the situation as it existed in 1928. The restraint grew as air commerce developed and we are therefore able to judge the purposes and tendencies of the combination in the light of what occurred. The restraints and power of monopolization, however, were all inherent in the combination from the beginning—inherent in a continuing union of potential competitors in air transportation, inherent in the allocation of markets, inherent in the combination of air and sea transportation, inherent in the basic 50–50 division of control. The damaging consequences of the combination were virtually certain to grow as the enterprise prospered; if they were not inevitable, they were probable indeed. It is that tendency (as well as the parties' anti-competitive purposes) which made

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BRIEF FOR RESPONDENT

ent case. The argument which the Government makes, which finds no support in any case and is contrary to long and firmly established law (*United States* v. *du Pont & Co.*, 118 F. Supp. 41, 219-220 (D. Del. 1953), *aff'd* 351 U. S. 377 (1956); *United States* v. *Imperial Chemical Industries*, 100 F. Supp. 504, 557 (S. D. N. Y. 1951); *Brewster, Antitrust and American Business Abroad* 206 *et seq.* (1958); *Fugate, Foreign Commerce and the Antitrust Laws* 257 (1958)), is that joint ventures are illegal because the joint venturers, except for their joinery together, might have gone into the same business individually and become competitors, hence their joinder is a combination of "potential competitors" in restraint of trade.

The extracts quoted in the Government's brief from the district court's opinion, relating to the arrangements between the founders of Panagra for protecting their independent lines from the competition of their joint creation, from which the Government argues that the "purpose underlying the formation of Panagra was to protect Pan American and Grace from competition" (Brief for the United States 31), do not accurately reflect the court's opinion or adequately present the case, which the court found was *not* a case of a combination of competitors to suppress competition.

We will give fuller quotations or summarizations of the court's opinion which give a truer insight into the organization of Panagra and the nature of the joint venture.

The district court stated:

> "In 1927 substantially all transportation between this country and Latin America was by steamship. International commercial aviation was in the experimental stage and as yet no American air transportation company had entered upon operations from the United States to South America" (Opinion, R. 5372).

* * * * *

"Between 1920 and 1927 several German and French companies had established commercial air transportation services in South America, in Colombia, Bolivia; Brazil, Argentina and Chile, and were receiving financial and diplomatic assistance from their governments necessary to the establishment and maintenance of such services. These foreign companies had envisioned routes throughout South America and had sought also to extend into the Canal Zone and to the United States.

"Our government was greatly concerned for political, military and business reasons, with the successful establishment of an American system of air transportation to Latin America, and recognized the need for legislation under which financial aid could be rendered to American companies to engage in international air transportation. The result was the enactment by Congress in March, 1928, of the first Foreign Air Mail Act (45 Stat. 248, amended, March 2, 1929, 45 Stat. 1449) which authorized the Postmaster General to let contracts for not more than ten years for the transportation of mail by airplane to foreign countries or insular possessions of the United States. The method of payment established by the Postmaster General was based on the mileage flown without relation to the amount of mail carried. It was in essence, subsidy" (Opinion, R. 5373).

The district court then made reference to Pan American's plans, starting in 1927, to establish a complete system of air transportation serving all parts of the Caribbean and Central and South America, and its inauguration of service in 1928 with the award of mail contracts for routes between Florida and Cuba and Miami and the Canal Zone (Opinion, R. 5373-374). Pan American's con-

most parts (D. Ex. PS-2, R. 173, 4499). Pan American had planned the establishment of air service between the United States and all parts of Latin America but had established service only between Miami and Cuba and Miami and the Canal Zone with spurs to Belize, Guayaquil and Curacao. Because the Grace organization on the west coast of South America could be of material aid in the establishment and operation of a pioneering airline down the west coast of South America, Pan American decided that it would be desirable to have Grace participate in that part of the Pan American operation from the Canal Zone down the west coast of South America. Accordingly, Panagra was formed as a joint venture of the two parent companies to own and operate an airline which would connect with Pan American at the Canal Zone and operate from the Canal Zone south down the west coast of South America (Opinion, R. 5377-378, n. 7).

Grace's only interest in airline ownership was in a line which would run from the Canal Zone down the west coast of South America, and Pan American's only interest in joining with Grace was in the operation of an airline from the Canal Zone down the west coast of South America. Panagra was formed for this specific and only purpose with the understanding expressed, implicit and inherent that it would not parallel Pan American's lines, with one of which it would be a connecting service, and that Pan American would not parallel the Panagra route (Opinion, R. 5376-378).

The establishment of the Panagra service, as all other air services into Latin America, was dependent upon Government financial aid in the form of a mail contract. Such a contract, for ten years, was awarded to Panagra

in 1929 (Opinion, R. 3373, 3382; D. Ex. P-406, R. 3651*). The formation of Panagra as a joint venture of Pan American and Grace and the Panagra undertaking by Pan American and Grace were thus approved by the Government and received the support of the Government during an initial ten-year period and for most of the years since. The policy of the Government in subsidizing American air lines in international transportation was a "no parallel" policy at least for the period of the ten years that the subsidy took the form of air mail contracts. Since 1938, entry into the field of international transportation by an American air line has been only upon certification by the Civil Aeronautics Board and the President of the United States and subject to their decisions as to competitive policies.

Summary of Argument

The formation of Panagra as a joint venture of Pan American and Grace to operate an airline connecting with and complementary to Pan American's own line was altogether legal in the nature and circumstances of the undertaking.

Pan American and Grace were not competitors. There was no American airline industry into South America at

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* Pan American exhibits P-2 through P-427, R. 1859-4269, were introduced into evidence at page 359 of the original transcript, a portion of the transcript which was omitted from the printed record. Citations hereafter made to P-2 through P-427 will omit any reference to the point at which they were introduced. Defendants' exhibits will be referred to as "D. Ex." In addition, exhibits were introduced in the court below with letter prefixes to distinguish the defendants and various types of exhibits. For purposes of clarity we will continue to refer to the exhibits in the same manner here, as follows: Pan American exhibits: "P"; Pan American statistical exhibits: "PS". Thus a typical Pan American exhibit will be referred to as "D. Ex. P-2, R. 1859".

the precise question referred to the Attorney General was the rejection of the low bid, it is inconceivable that the chief legal officer of the Government, particularly a lawyer of Attorney General Mitchell's stature, would have failed to voice disapproval if anyone had entertained the slightest notion that Pan American's having taken Grace in as an associate in Panagra violated the antitrust laws. The Government was glad, not sorry, that these two companies had joined forces to perform a difficult assignment which the Government wanted performed in a way that would reflect credit on our country.

Panagra commenced operating with single-engine Fairchild aircraft that had a seating capacity of two passengers, later succeeded by Ford tri-motor planes with a capacity of 12 (D. Ex. PS-5, R. 173, 4526; PS-1, R. 173, 4498). Pan American commenced operating the Miami-Balboa route with Sikorsky S-38s which had a seating capacity of only eight passengers, succeeded by Sikorsky S-41s and Commodores that could carry 10 and 20 passengers respectively (D. Ex. PS-2, R. 173, 4499; PS-1, R. 173, 4498).

When Panagra commenced its Canal Zone-Buenos Aires operation, it operated only once a week. In 1930 this was increased to twice weekly, and it remained there until 1940 when it was increased to thrice weekly. Thus, prior to 1940 Panagra had a capacity of from two passengers a week in 1929, using the Fairchild equipment, to 42 passengers a week in 1939, using DC-3 equipment (D. Ex. PS-1, R. 173, 4498; PS-5, R. 173, 4526). Over this same period, Pan American was operating the Miami-Canal Zone route on a two or three times weekly schedule (D. Ex. PS-3, R. 173, 4514). Thus Pan American had a capacity over this route of between 24 passengers a week

in 1929, using the S-38, and 84 passengers a week in 1939, using the S-42 (D. Ex. PS-1, R. 173, 4498; PS-2, R. 173, 4499; PS-3, R. 173, 4514). Down the east coast of South America, frequency was limited to once a week from 1931 to 1937, when it was increased to twice weekly, where it remained until 1940. Thus, over this long route Pan American was able to carry only 8 passengers a week in 1931 and 56 passengers a week in 1939 (D. Ex. PS-1, R. 173, 4498; PS-2, R. 173, 4499; PS-4, R. 173, 4524).

However, capacity loads were almost never achieved. For example, in 1932 when Panagra planes had a capacity of between 8 and 10 passengers, the average passenger load was only 3.1 passengers; in 1939, when Panagra planes had a capacity of between 14 and 21 passengers, the average passenger load was only 7.6 passengers (D. Ex. PS-7, R. 173, 4532). On the east coast route Pan American had an average passenger load of only 10 passengers in 1936, when the planes used had a capacity of 28 passengers, and in 1939 Pan American's average passenger load over this route was 9 passengers although the capacity of equipment used was between 14 and 28 (D. Ex. PS-11, R. 173, 4546). On the Miami-Canal Zone route Pan American in 1932, using planes with a capacity of 8 passengers, had an average passenger load of only 2.5 passengers; in 1939, using planes with a capacity of 28 passengers, Pan American's average passenger load was only 11.5 passengers (D. Ex. PS-9, R. 173, 4544).

The inevitable result of this combination of planes of small capacity, low frequency of service, and low utilization of even the small capacity offered, along with high costs for maintaining air fields, landing bases, terminals, communications and meteorological facilities, was exactly what had been anticipated—heavy dependence upon subsidy.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 47

UNITED STATES OF AMERICA,

Appellant,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., and PAN AMERICAN-GRACE AIRWAYS, INC.,

Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR RESPONDENT PAN AMERICAN WORLD AIRWAYS, INC.

Question Presented

We accept the government's statement of the question presented on this appeal.

Statement of the Case

We would add to the Government's statement of the case, Pan American's statement of the case in Appeal No. 23 and the following:

At the time Panagra was formed there was no American airline operating in South America or between the United States and South America except to the northern-

the time Panagra was formed. Pan American and Grace joined in a pioneering undertaking to create the industry. It cannot be contended, therefore, that their joint venture was a combination of competitors to suppress competition. Nor can their joint venture be condemned as a combination of potential competitors, for they were no more potential competitors than any joint venturers are.

The joint venture had only the normal incidence of non-competition between parents and a subsidiary. It was formed under Government aegis under the prevailing "no-parallel" policy in respect to subsidizing airlines in international transportation. While that Government policy did not continue firmly after 1938, the Government agency charged with the responsibility of determining the extent of desirable and allowable competition between American airlines in international transportation has certificated only one additional American flag carrier into South America and has declared itself as strongly opposed to authorizing three American flag carriers in the area. It has been economically impossible at all times to have Pan American and Panagra enter into competition with each other. The losses involved in such competition would have been staggering and would not have been sanctioned by the CAB through essential certification and subsidization.

In sum, the situation with respect to Panagra is no different than if Pan American had established the route from the Canal down the west coast of South America alone. Its taking Grace as a partner did not make the joint venture illegal or create the legal expectation that Pan American and Panagra would compete or an illegal implication if they did not compete.

ARGUMENT

The Government in its brief has concentrated on certain aspects of the arrangements between Pan American and Grace in the formation of Panagra and has disregarded the fundamental nature of the Panagra undertaking and the circumstances under which it was undertaken. By erroneously classifying Pan American and Grace as competitors or potential competitors the Government erroneously assigns to the normal, non-competitive relationship between partners, and in this case between parents and subsidiary, the quality of illegality of a combination of competitors to suppress competition between themselves. The classification and the characterization ignore the basic and all important facts that the industry upon which the parties embarked as a joint venture was non-existent at the time, that far from being competitors they were creators of a new industry, joined by the Government in making an American entry into the pioneering field of air transportation in South America. To classify them as potential competitors is to classify all joint venturers in new industries as potential competitors. It is to condemn all joint investments in such fields as the new space industries and underdeveloped countries. Finally it is to ignore the nature of this industry in 1928 as one shortly to be regulated because it was not suitable for unregulated competition, and one which has since become so fully regulated that the whole subject matter of this case, as in point one in our appellant's brief on the companion appeal (No. 23, pages 51 *et seq.*), is within the primary jurisdiction of the Civil Aeronautics Board (CAB).

The cases upon which the Government relies and from which it quotes standard phrases of antitrust law have nothing in common with the case at bar and neither their holdings nor language have any applicability to the pres-

sideration of interesting steamship companies in its Latin American undertaking is explained as follows:

> "* * * Pan American at this time was seeking to interest the principal shipping companies along the various proposed routes in financial participation as well as to secure the benefits of association with steamship lines, including air-sea rescue arrangements, and use of communication and agency facilities of these lines which would considerably decrease the amount of capital investment for such facilities immediately necessary in the operation of air transportation companies" (Opinion, R. 5376).

Grace became interested and agreement was reached that the two companies would cooperate in studying the cost of operations of a route from the Canal Zone down the west coast of South America, and that if Pan American determined that it was advisable to bid on a contract for carrying the mails between the Panama Canal and Valparaiso a joint company would be used for the purpose and Grace might take such interest in the company as it wished up to 50% (Opinion, R. 5376-379).

> "Pan American's study of this route indicated that even with the revenue of a United States mail contract, conditions did not then justify its undertaking to install an air transportation service in that area. By combining with Grace, however, they mutually concluded that they could operate a west coast service more economically than could any other air transportation company, including the French and German companies" (Opinion, R. 5379).

The present suggestion of the Government that the formation of Panagra "deprived the government of com-

petitive bidding on the contract" of mail carriage from the Canal down the west coast of South America (Brief for the United States 38) is completely refuted by the facts cited in the district court's opinion that the contract was awarded to Panagra, over a lower bidder, *because* Panagra was a joint venture of Pan American and Grace. The Postmaster General, in awarding the contract to Panagra, spoke of the "financial ability of the bidders" (he regarded Pan American and Grace as the "bidders" although Panagra was the bidder), of "their proven and recognized capacity for performing the service contemplated," of the preparation for the operation by Pan American and of the benefit that would be added by the facilities of the Grace Line (Opinion, R. 5380-381). His consciousness of the importance and desirability, in the public interest, of having Pan American and Grace together in the undertaking could not have been more feelingly expressed:

> "'I would repeat that the contract in question is for a route most difficult to serve but at the same time of very great and far-reaching importance not only to the public but to the whole future of transportation by air. Failure would be a serious blow to the prestige of American aeronautical enterprise.'" (Opinion, R. 5381).

The district court naturally and necessarily concluded that:

> "The joinder of Pan American and Grace, with their complementary resources, in the formation of Panagra to establish American air transportation on the west coast of South America was of decisive importance to the Postmaster General in awarding to Panagra the United States Mail contract for the west coast route. Such a contract was the

> umbilical cord of any proposed American flag international air operations in South America, without which they could not long survive. It is beyond peradventure that the successful inauguration of an international air transportation system in South America, with the flying equipment then available, with no airfields or ground facilities but what defendants supplied or arranged themselves, with only the air to fly in and the ground to land on, was in the truest sense a pioneering endeavor. The technical and physical resources possessed by each of the defendants, together with the financial and diplomatic assistance rendered by this government were pooled to facilitate the success of Panagra, the American entry on the west coast of South America" (Opinion, R. 5381-382).

We will state a few further facts from the record which will indicate how remote from reality it is for the Government to speak of the formation of Panagra in the terms of a combination of competitors to suppress competition, and to suggest that the law against restraints and monopolies had any application to the situation.

Airplanes at the time Panagra was formed were small, with a capacity of only a half dozen passengers or less, and with exceedingly limited range and speed (D. Ex. PS-1, R. 173, 4498). Revenues even at full load—and passengers willing to venture in this new form of transportation were few and far between—could not begin to pay operating costs. This was particularly true as regards operations in Latin America where, in contrast to the situation within the United States, the prospective operators faced the task of providing air fields, terminals, and communications and meteorological facilities at their own expense (D. Ex. P-91, R. 2482; P-119, R. 2578; P-417, R. 3742, 748-749).

None of the unsuccessful bidders for foreign airmail contracts ever attempted to inaugurate service. Just how essential a mail contract was to the service here in question is indicated by the fact that as late as 1932, its fourth year of operation, Panagra's commercial revenues amounted to only $366,000, as against operating expenses of $1,837,000 (D. Ex. PS-6, R. 173, 4528).

It was likewise plain to all concerned that only one contract would be awarded by the Government for any particular route. The established policy of the Government was that only one contract should be awarded (R. 191-192; D. Ex. P-149, R. 2716; P-164, R. 2810; P-418, R. 3749). This, of course, was the only sensible policy. With subsidies providing three-quarters or more of the revenue and with the operators making only a scanty return at that, any division of commercial revenues or increase in total costs due to duplicating operations would have frittered away the benefits of the subsidy and imposed additional burdens on the federal treasury. The State Department also was concerned that if more than one American airline were to seek concessions from South American governments, diplomatic complications would ensue (D. Ex. P-418, R. 3749).

The action of the Post Office Department in approving the joinder of Pan American and Grace in Panagra was by no means the last indication of the Government's sanction. Two days after the award of the new contract to Panagra, the low bidder entered a protest. The newly appointed Postmaster General, Hon. Walter Brown, referred the matter to the Attorney General, Hon. William D. Mitchell, who rendered an opinion approving Postmaster General New's action. 36 Ops. Att'y. Gen. 33, May 6, 1929 (D. Ex. P-136, R. 2680; P-137, R. 2680). While

comitant principle that partners would not enter into competition with their partnership, makes the Government's argument inadmissible.

CONCLUSION

The judgment of the district court with respect to its dismissal of the allegations against Pan American under Sections 1 and 3 of the Sherman Act should be upheld.

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Panagra had a large operating loss before mail pay every year between 1929 and 1939. This ranged from $527,000 in 1929 to $1,712,000 in 1931; it was $1,305,000 in 1938 and $996,000 in 1939. During this same period Panagra's revenue from passenger traffic was a mere $85,000 in 1929, $287,000 in 1933, and $697,000 in 1938. Also during this period, Panagra received from the United States Government, in the form of mail pay, between $1,200,000 and $1,600,000 each year after 1929. Even with this substantial subsidy,* Panagra had a loss in its first three years of operation, and as late as 1938 its profit amounted only to $226,000 (D. Ex. PS-6, R. 173, 4528).

Pan American's Latin American Division, which carried on the operations between Miami and the Canal Zone and down the east coast of South America, had an operating loss before mail pay every year during this period. This loss amounted to over $2,700,000 in 1929, over $2,000,000 in 1934, and over $3,000,000 in 1938. Mail pay during this period amounted to over $2,300,000 in 1929, over $4,000,000 in 1934, and over $4,700,000 in 1938 (D. Ex. PS-14, R. 173, 4549).

Pan American's passenger revenue on the Miami-Balboa route amounted to about 29 cents per mile in 1932 while its operating expense amounted to approxi-

* That the so-called mail pay was almost entirely subsidy is shown by testimony (R. 187-188, 203). The amount of mail actually carried was very small. The Government did not even make a pretense of basing mail pay upon the amount of mail carried. The payments were based on miles flown rather than on the amount of mail transported. In 1935, about the middle of the period under consideration, Pan American and Panagra carried about 4,000 pounds of air mail to Argentina. Panagra carried about 2,600 pounds of mail to Peru, and Pan American carried about 5,500 pounds of mail to Canal Zone (D. Ex. P-396, R. 3567).

mately $1.69 per mile. In 1936 its passenger revenue amounted to about 85 cents per mile, while its operating expense amounted to about $1.76 per mile. In 1938 Pan American's passenger revenue on this route amounted to approximately $1.25 per mile, while its operating expense amounted to over $2.00 per mile (D. Ex. PS-9, R. 173, 4544; PS-12, R. 173, 4547; PS-14, R. 173, 4549). A comparison of Pan American's passenger revenue with costs on the east coast route presents an even more unfavorable picture, because the passenger revenue per mile on that route was less than on the Miami-Canal Zone route (D. Ex. PS-11, R. 173, 4546; PS-13, R. 173, 4548; PS-14, R. 173, 4549).

In 1938, the last full year of the ten year term of the mail contract, the comparison of revenues and cost of operation of Panagra and Pan American's Latin American Division is shown by the following figures:

	Commercial Revenues per Mile	Expense per Mile
Panagra (D. Ex. PS-6, R. 173, 4528)	$0.70	$1.56
Pan American (D. Ex. PS-14, R. 173, 4549)	$1.27	$2.03

Only in one year during the period up through 1945 did either company obtain an operating profit before United States mail pay, even with the relatively heavy utilization of capacity resulting from wartime conditions (D. Ex. PS-6, R. 173, 4528; PS-14, R. 173, 4549).

And coming down to date, it is still apparent that competition between Pan American and Panagra by a duplication and paralleling of lines is unthinkable. The President only in 1946 decided, over a divided CAB, that another American carrier should be certificated to operate

to South America to provide competition with the Pan American system, of which Panagra was a part, and Braniff was certificated for the purpose. *Latin American Air Service*, 6 CAB 857, 912 (1946). The traffic figures of all American carriers into South America at the latest date available for incorporation in the record show that the competition between Pan American and Panagra visualized by the Government is out of the question.

The density of air passenger traffic on the American flag carriers operating within South America is exceedingly low (D. Ex. PS-101, R. 245, 4569). For Pan American in 1957 this amounted to only 87 revenue passengers over each mile of route per day if the Miami-Balboa sector is included and to 71.2 if it is excluded.* For Panagra the corresponding figure was 84.6. For Braniff's entire international division the figure was 35.7 and for its operation south of Balboa 25.4. These figures correspond roughly to the 80 revenue passengers per route mile per day carried by the highly subsidized local service carriers in the United States—a type of operation where no competitive service is considered feasible (R. 248, 250); they are approximately half that of the other foreign and overseas operations of United States carriers, and a very small fraction of the 917.8 revenue passengers per route mile per day for the domestic trunk operators (D. Ex. PS-101, R. 245, 4569). Yet there are almost no foreign routes where the United States has three competing carriers; indeed, even on the heavily traveled transatlantic route this experiment was abandoned in 1950. *North Atlantic Route Transfer Case*, 11 CAB 676 (1950).

Understandably, the CAB has taken the position, reiterated as recently as August of last year, that three Ameri-

* All these figures include passengers in both directions. The one-way movement is half of these amounts (R. 249-250).

can flag carriers in Latin America would entail a "waste of public money or private investment." *New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501, 504 (1954); *United States-South America Route Case*, CAB Docket 12895, Order No. E-17289, August 8, 1961. It is not conceivable, therefore, that the CAB, which has considered Panagra part of the Pan American system (*New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501, 504, n. 9 (1954)), would sanction the establishment of paralleling and competing services by Pan American and Panagra, which together with the service of Braniff would bring three American flag carriers into South America.

There is no warrant for the Government's statement that "There can be no question but that the extension of Panagra to a main line gateway would be consistent with the Federal Aviation Act and in the best interests of the United States" (Brief for the United States 45). While the CAB indicated at one time that it thought an application of the kind should have been submitted for the Board's consideration (*Latin American Air Service*, 6 CAB 857, 914 (1946)), it has never indicated that it would grant such an application, and we submit that it is demonstrable from all that the Board has said with respect to its policy against subsidizing three American flag carriers into South America that it would never have created the situation which it has set itself so strongly against.

Further, as we point out in our brief as appellants on the companion appeal (No. 23, Pages 61 *et seq.*), the CAB's approval of the Through Flight Agreement between Pan American and Panagra, whereby Panagra planes make through-flights over the combined routes of the two lines between the United States and western South Amer-

ica, which the Government correctly refers to as a "settlement" of the issue of Panagra's access to the United States (Brief for the United States 15), constituted an approval of not extending Panagra's line to the United States and accorded Pan American antitrust immunity in that respect.

It is only necessary to glance at the financial consequences, in the terms of *increased* subsidy required to maintain such uneconomic competition, to understand why the Board has expressed itself as strongly as it has on the subject.

The *increased* subsidy requirements to underwrite paralleling and competing services between Pan American and Panagra on the west coast route are indicated by calculations which were made as to the amount those *increased* subsidy requirements would have been in sample years 1952 and 1957, upon an assumption (No. 1) that Panagra would be extended from the Canal to Miami and an assumption (No. 2) that Pan American would be extended from the Canal down the west coast of South America. These analyses are summarized in D. Exhibit PS-114 (R. 245, 4584) as follows:

INCREASED SUBSIDY REQUIREMENTS UNDER ALTERNATIVE ROUTE PATTERNS

I. Assumption No. 1 (extension of Panagra from Balboa to Miami).

	1952	1957
Pan American	$2,697,000	$3,733,000
Panagra	1,364,000	975,000
Total	$4,061,000	$4,708,000

II. Assumption No. 2 (extension of Panagra from Balboa to Miami; extension of Pan American to the west coast of South America).

	1952	1957
Pan American	$4,080,000	$4,764,000
Panagra	2,103,000	2,213,000
Total	$6,183,000	$6,977,000

The Government acknowledges that for ten years after the formation of Panagra "the Post Office Department had enforced a 'no-parallel' policy of subsidizing only one carrier on each international route" (Brief for the United States 13). The Government further states that it does not challenge the district court's finding that the formation of Panagra was consistent with the transportation policy expressed by the Post Office Department in its "no-parallel policy" (Brief for the United States 67). The Government states, however, that after the formation of the Civil Aeronautics Board in 1938, it "became possible for Panagra, as well as Pan American, to obtain a subsidy between the Canal Zone and the United States" (Brief for the United States 13), and seems to intimate that the change of government policy should have been anticipated ten years in advance and that when the change came it rendered the formation of Panagra, blessed by the Government at the time, illegal *nunc pro tunc*.

It is true that there is the "possibility" of the Government's subsidizing both Pan American and Panagra on parallel routes at an exhorbitant waste of public funds, but, as we have observed, this is extremely unlikely in the light of the CAB's policy statements with respect to subsidizing uneconomic competition. And certainly,

the fact that Government policy might change with respect to the paralleling of routes cannot rightly be said to make the joint venture in Panagra illegal either originally or subsequently.

Neither the facts nor the district court's opinion support the Government's statement, so far as Pan American is concerned, that "the undisputed evidence shows, and the district court found, that Pan American and Grace joined to form Panagra in order to protect themselves from competition" (Brief for the United States 19, 31). It is undoubtedly true that Grace feared competition to its steamship line from an airline and that its interest, which was confined to the west coast of South America, was in having a hold in the American airline which was to operate from the Canal down the west coast of South America. But there is no evidence that Pan American's willingness to join with Grace in the formation of Panagra was actuated by any motive of protecting itself from competition, and the district court's references to the non-paralleling arrangement made between the parents and their subsidiary do not warrant the Government's statement that Pan American joined Grace in Panagra to protect itself from competition.

Pan American at the time was embarking upon a program entirely of its own to establish air service from the United States throughout Latin America. It intended to establish for itself a west coast route as well as an east coast route and had established its route from Miami to the Canal. It was persuaded to take Grace as a partner on the west coast route from the Canal south only because Grace could bring to the venture in that area helpful facilities and financial support. True, it was explicit, and as the Government observes it would have been im-

plicit if it had not been explicit, that there was not to be a paralleling of routes between Pan American and its own creation. But the situation in this respect, we maintain, is no different than if Pan American had established a west coast service entirely of its own. We submit that Pan American was as much entitled to take a partner in the venture as to go it alone and that the antitrust implications are no different in either case.

It is correct, as the Government contends, that the fact that Panagra was a "joint venture" does not in and of itself make an antitrust difference. Competitors may enter into a combination to suppress competition between themselves through a joint venture as well as through other forms of combination. *Timken Roller Bearing Co. v. United States*, 341 U. S. 593 (1951). But a joint venture of persons who are not competitors for the purpose of creating a business where none has existed cannot be held to be a combination to suppress competition.

The Government's thesis that there cannot be a lawful joint venture of "potential competitors" (Brief for the United States 35, 37), if accepted, would mean that there could never be a legal joint venture. It could be said of any two persons who go into business together that they might have gone into business alone and have competed, and therefore that any joint venture is a combination of "potential competitors." But no court has ever made such a holding and, so far as we know, it has never heretofore been suggested by the Government or by anyone else that one who is interested in going into a business must do it alone or run the risk of being dispossessed after the business has become successful upon the ground that if a partnership had not been formed the partners might have established separate and competing businesses.

If the Government is not correct in its thesis, and plainly it is not, it was entirely legal for Pan American and Grace (subject to any disqualification of Grace as a steamship owner) to embark upon a joint business of creating and operating an airline, and it was equally legal for them to agree upon the territory in which the airline was to operate. Neither singly nor jointly do people go into business without a determination of what the business is to be and where it is to operate. The territorial element is as much a part of the undertaking as the nature of the business. The territory in this case was the only territory in which either of the parties was interested in joining together. It was the one territory in which Grace was interested in participating in an airline, and it was the one territory where Pan American was interested in having a partner. Indeed, in essence the venture was the equivalent of Pan American's own operation and it was considered by the CAB to be a part of the Pan American system.

The Government ignores this basic fact of crucial importance, that the design in the formation of Panagra was to integrate it with the Pan American system and have the two lines serve together as connecting and complementary services between the United States and the west coast of South America. It is as true, as the Government asserts it to be, that it was understood that the two services were not to become competitive, as they were intended to be complementary. But again we cannot conceive of a sustainable antitrust argument to the effect that one who has established a service between two points cannot join with a partner in establishing a connecting service to another point without being under an inhibition against maintaining the service as connecting and a compulsion to allow it to become competitive.

Just as the Pan American and Panagra services were connecting and complementary, it was natural and desirable that they should have some joint offices, joint sales and joint publicity. The Government notes a token objection to these arrangements (Brief for the United States 42), ignoring the sound reason for the arrangements, the fact that the agreements making the arrangements were all filed with the CAB (R. 1852-853), and come within the jurisdiction of the CAB under Section 412 of the Civil Aeronautics Act, and the fact that the district court deferred to the primary jurisdiction of the CAB the legality of the joint advertising, sales and offices agreements between the two airlines (Opinion, R. 5372).

We cannot understand the import of the Government's statement that "If an independent carrier had been permitted to develop on the west coast or if Grace had remained free to enter the field, the enterprise would have soon become a potential competitor between the Canal Zone and gateways in the United States" (Brief for the United States 21-22). Grace was free to enter the field except as it was under a legal restraint not to compete with the partnership in the field of the partnership's operation, which was from the Canal south down the west coast of South America. Grace was free to apply for a route between the Canal Zone and the United States or any other place in Latin America except from the Canal down the west coast of South America. In fact Grace did apply for a route between the United States and the Canal Zone and was rejected on the grounds that it was affiliated with a steamship line. *Latin American Air Service*, 6 CAB 857, 868, 902 *et seq.* (1946). Nor was there any restraint upon any "independent carrier" being "permitted to develop on the west coast." Anyone inter-

ested in developing an airline on the west coast or elsewhere in South America or between the United States and South America was perfectly free to do so, if the CAB and President could be persuaded to allow it, and such an independent line has been developed in Braniff. The so-called restraint against Panagra, as a creation and part of Pan American, becoming a parallel competitor of Pan American is no restraint on the development of an "independent carrier." (See also Brief for Appellant Pan American in Appeal No. 23, pages 34-36).

It is therefore not true, as the Government suggests, that "Pan American exercised its power over Panagra to exclude the direct competition of the only company which could provide an effective challenge to Pan American's dominance of the United States-Canal Zone segment of the South American trade" (Brief for the United States 46). There could have been at any and all times exactly as much competition as the CAB thought desirable or tolerable. We submit that the last place to look for "effective" competition with Pan American would be Pan American's own creation and a part of the Pan American system. Nor is it necessary to look there for competition. The claimed "dominance" of Pan American in the area is completely refuted in our appellant's brief in the Companion Appeal (No. 23) where we point out (page 48) that there are eight airlines which operate between the United States and Panama. We also respectfully refer the Court to our discussion of the whole South American market in our companion brief at page 37 *et seq.*

The Government cannot carry its conflicting arguments, each of which destroys the other, that it would not be expected, in the relationship existing between Pan Ameri-

can and Panagra, that Pan American would promote the competition of its own creation with itself, but that still its own creation was the only expected source of effective competition with itself. The fact is, of course, as the Government both concedes and asserts, that there was never intended to be competition between Pan American and Panagra and there is no reason why such competition should have been expected or looked for or why Pan American should be criticized for not creating it.

The Government's case necessarily comes down to the questions, therefore, (1) whether it was permissible or impermissible for Pan American to establish a connecting service from the Canal down the west coast of South America in a partnership with another party instead of establishing a service entirely of its own, and (2) having established the connecting service on a partnership basis, was Pan American required to let that connecting service become competitive with its own service and, more than competitive, to have it replace Pan American's own service, which would concededly be the case unless Pan American in turn should enter into competition with its own partnership on the connecting service? The full cycle of the Government's argument, therefore, comes back to a claim that a joint venture is either illegal or impractical, for the only end result that could be legal would be highly impractical and undesirable, namely, that the joint venturers would have to allow their joint venture to enter into competition with their own businesses and they would have to enter into competition with their joint venture.

No case has ever suggested such a rule, and the unquestioned legality of joint ventures, with the con-

(a) Whether the district court correctly found that Pan American has monopolized or attempted to monopolize U.S. foreign commerce in air transportation between South America and the continental United States and between the Canal Zone and the United States.

(b) Whether Pan American has been granted immunity by the Civil Aeronautics Board for its antitrust violations involving Panagra.

(c) Whether the Civil Aeronautics Board has exclusive or primary jurisdiction of the matters involved in this action.

(d) Whether divestiture is the appropriate remedy for Pan American's, as well as Grace's, antitrust violations involving Panagra.

ADDITIONAL STATUTES INVOLVED

Sections 408, 411, 412, and 414 of the Federal Aviation Act, 72 Stat. 737, as amended, 49 U.S.C. 1378, 1381, 1382, and 1384, provide in pertinent part:

> SECTION 408. (a) It shall be unlawful unless approved by order of the Board as provided in this section—
>
> (1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;
>
> (2) For any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other

phase of aeronautics, to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any air carrier;

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

(4) For any foreign air carrier or person controlling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen of the United States engaged in any phase of aeronautics;

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

(6) For any air carrier or person controlling an air carrier to acquire control, in any manner whatsoever, of any person engaged in any phase of aeronautics otherwise than as an air carrier; or

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

SECTION 408. (b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of con-

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC., APPELLANT

v.

UNITED STATES OF AMERICA

No. 47

UNITED STATES OF AMERICA, APPELLANT

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., AND PAN AMERICAN-GRACE AIRWAYS, INC.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES IN RESPONSE IN NO. 23[1]

ADDITIONAL QUESTIONS PRESENTED

The questions specifically raised by the appeal of Pan American in No. 23 are:

[1] The "Opinion Below," "Jurisdiction," the portion of the "Questions Presented" and "Statutes Involved" common to both appeals, and the "Statement" are in the government's original brief filed in both Nos. 47 and 23. The issues considered in this brief will be those particularly raised by Pan American's appeal in No. 23.

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In this case, it is clear that Pan American and Panagra were the leading air carriers between South America and the United States and that together they dominated this traffic. Thus, Panagra would normally be expected to be Pan American's strongest competition between the United States and the Canal Zone. The district court found that Pan American and Panagra together carry 50 percent of all air traffic between the United States and South America (R. 5401–5402). Pan American alone carries 30 percent of this traffic and Panagra 20 percent (R. 1388–1394). These percentages were even higher when Pan American first prevented Panagra from applying for a route to the United States in the late '30s and early '40s, before Braniff was certificated to fly between South America and the United States and between the Canal Zone and the United States. Pan American participates in the entire amounts of both Pan American and Panagra traffic by reason of its 50 percent ownership of Panagra and in addition, since 1946, because of the Through Flight Agreement. Profits from flights under the agreement between the Canal Zone and Miami are divided between Panagra and Pan American (R. 1871–1874, 1879–1883).

As Pan American recognizes (Br. 39, 48), the balance of air traffic between the United States and South America is divided among a large number of other carriers. Accepting Pan American's own figures,[3] the balance of the through traffic to South America is divided among 19 foreign carriers, and the

[3] The district court stated that the balance was carried by "at least ten" other airlines (R. 5402).

balance of local traffic to the Canal Zone is divided among eight foreign carriers.[1] Pan American correctly notes (Br. 47) that no evidence was introduced at trial—by it or the government—as to the division of traffic among these carriers. Assuming that they share equally in the traffic, as this Court assumed with respect to sales of advertising space in *Times-Picayune Pub. Co.* v. *United States*, 345 U.S. 594, 612, each competitor for local traffic would have 12½ percent of that business, while each competitor for through traffic (which according to Pan American is two-thirds of the total (Br. 18)) would have only five percent. In the *Times-Picayune* case, this Court stressed the significance of such diffusion, stating that "obviously, if a producer controlling an even lesser share than here [only one-third] is ringed by numerous smaller satellites together accounting for the rest, his mastery of the market is greater than were he facing fierce rivalry of other large sellers." 345 U.S. at 612, note 33.

Moreover, Pan American and Panagra's dominance is reinforced by their position with respect to other American flag carriers. The distinctions between foreign competition and United States flag competition have often been noted by the Civil Aeronautics Board. *Latin American Air Freight Case*, 16 C.A.B. 107, 112; *Additional Service to Latin America*, 6 C.A.B. 857, 863–866; *North Atlantic Route Case*, 6 C.A.B. 319, 325; *American Export Airlines, Inc.*, 2

[1] As the district court found (R. 5402), two of these carriers "are 'affiliates' of Pan American, i.e., Pan American owns a substantial minority share of their outstanding stock."

C.A.B. 16, 32-34. American carriers are normally favored by American travelers, just as the foreign flag airlines have special access to their own nationals. As the Civil Aeronautics Board observed in *American Export Airlines, Inc., supra*, "the part which national loyalties may be expected to play in the routing of traffic must not be forgotten." *Id.* at 32. Not only "national loyalties," but currency exchange regulations, language difficulties, airline office locations, and other intangible factors often militate toward the selection of a carrier flying the flag of the passenger's own allegiance. In addition, passengers and shippers may be required to patronize United States flag carriers by the requirements of various government purchase or subsidy programs that American ships or planes be utilized to a specified degree. See 46 U.S.C. 1241(b) (requiring cargo paid for by the government to be shipped on American flag vessels); 46 U.S.C. 1241(a) (requiring government employees traveling on official business to utilize American flag vessels); S. Con. Res. No. 2737, 87th Cong., 1st Sess. (proposing the same as to air carriers).

By Pan American's own evidence more than three-quarters of the American citizens traveling by air to South America utilize an American carrier (R. 4582).[5] While Pan American correctly observes (Br. 39–40) that the foreign carriers' market share is increasing, the Board's staff has pointed out that for-

[5] Pan American recognizes in its brief (p. 40) that "[f]oreigners now travel principally by foreign airlines." For the same reasons, the overwhelming majority of Americans travel with United States flag carriers.

trol, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided,* That the Board shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: *Provided, further,* That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5(8) of this title, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition: *Provided, further,* That in any case in which the Board determines that the transaction which is the subject of the application does not affect the control of an air car-

rier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition, and determines that no person disclosing a substantial interest then currently is requesting a hearing, the Board, after publication in the Federal Register of notice of the Board's intention to dispose of such application without a hearing (a copy of which notice shall be furnished by the Board to the Attorney General not later than the day following the date of such publication), may determine that the public interest does not require a hearing and by order approve or disapprove such transaction.

SECTION 411. The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

SECTION 412. (a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract

man Act by monopolizing or attempting to monopolize United States foreign commerce in air transportation between South America and the United States and between the Canal Zone and the United States. On the other hand, if our basic submission is correct, questions concerning the legality of Pan American's action judged independently become irrelevant.

In this brief, assuming that our basic argument may be wrong, and that the district court was correct in holding that the original arrangements between Pan American and Grace were not unlawful, we show that the court was also correct in holding that Pan American violated Section 2. This holding was based upon findings that Pan American has been since 1928 the dominant air carrier on the Canal Zone-United States segment of commerce with South America; that by using its 50 percent stock ownership in Panagra, Pan American prevented Panagra from entering that segment of commerce; that Pan American thereby maintained its dominance not only over air transportation between the United States and the Canal Zone, but also between the United States and South America as a whole; and that Pan American thus monopolized or attempted to monopolize this commerce in violation of Section 2 of the Sherman Act. We will first show that these findings are amply supported by the evidence.

Pan American argues (Br. 51–72) that it has received antitrust immunity from the Civil Aeronautics Board for its actions with respect to Panagra, and that, in any event, the matters involved in this antitrust suit are subject to the exclusive or primary

jurisdiction of the Board. We will show, on the contrary, that the Board has approved neither the existence of the unlawful combination from which Pan American's power over Panagra flows, nor Pan American's exercise of that power to stifle Panagra competition with Pan American's independent interests. The decisions of this Court also make it clear that the court below properly entertained this suit even though the Board has regulatory authority over many other aspects of international commercial aviation. Finally, we will show that divestiture is the proper remedy for Pan American's, as well as Grace's, violation of the antitrust laws.

ARGUMENT

I

THE DISTRICT COURT CORRECTLY FOUND THAT PAN AMERICAN MONOPOLIZED OR ATTEMPTED TO MONOPOLIZE U.S. FOREIGN COMMERCE IN AIR TRANSPORTATION BETWEEN SOUTH AMERICA AND THE CONTINENTAL UNITED STATES, AND BETWEEN THE CANAL ZONE AND THE UNITED STATES

One of the primary routes to South America includes a flight between the Panama Canal and the United States mainland. While Pan American flies other alternative routes to South America, Panagra has no route to the United States at all; the Canal Zone is Panagra's northern terminal, its gateway to the United States. While Panagra moves its aircraft under charter to Pan American on Pan American routes from the Canal Zone to the United States, as will be seen below (pp. 17–19), this is not equivalent to a route of its own. For Panagra to extend its route north to the mainland would not only give it a greater

share of the Canal Zone-United States traffic but would increase its ability to attract passengers to South America as well.

Pan American's 50 percent stock interest in Panagra gave it the power to exclude Panagra from this vital route. The district court found that "Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes. Prior to Braniff's entry into the market * * *, and prior to the Through Flight operations, Pan American enjoyed a virtual monopoly of the United States-South American market" (R. 5405–5406). The market which the district court found Pan American had monopolized or attempted to monopolize was air transportation between South America and the United States. The court further held that the United States-Canal Zone segment of the market was itself a relevant submarket which Pan American had monopolized or attempted to monopolize. These market definitions were correct, and the court's finding that Pan American has monopolized or attempted to monopolize those markets is in accord with recognized antitrust principles.

A. THE RELEVANT MARKETS ARE AIR TRANSPORTATION BETWEEN SOUTH AMERICA AND THE UNITED STATES AND BETWEEN THE CANAL ZONE AND THE UNITED STATES

In our original brief in these cases (pp. 48–61), we contended that the widest relevant market in this case

includes all forms of commercial transportation. But, as this Court recognized in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325, "within this broad market, well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes." The two submarkets which the district court found to exist are (1) air transportation between South America and the United States, and (2) air transportation between the Canal Zone and the United States. Since Section 2 of the Sherman Act prohibits the monopolization of "any part of the trade or commerce * * * with foreign nations * * *," Pan American's monopolization or attempted monopolization of either air transportation market would in itself violate the Act.

B. PAN AMERICAN'S ACTIONS EXCLUDING PANAGRA FROM THE UNITED STATES CONSTITUTES MONOPOLIZATION OR ATTEMPTED MONOPOLIZATION OF THE RELEVANT MARKETS

The decisions of the Court have established that the power to exclude competitors is monopoly power, and that the acquisition, maintenance, or exercise of monopoly power constitutes illegal monopolization under Section 2 of the Sherman Act. *E.g.*, *American Tobacco Co.* v. *United States*, 328 U.S. 781; *United States* v. *Griffith*, 334 U.S. 100. In our original brief (pp. 43–47), we showed that Pan American, by combining with Grace, acquired the power, which it has continuously exercised, to exclude the direct competition of Panagra, the company which could best provide an effective challenge to Pan American, from

a crucial segment of the South American trade. Pan American's 50 percent stock interest in the joint company has enabled it to nominate four of Panagra's eight directors, and its consequent ability to throw the Panagra directorate into deadlock has been used to block applications to the Civil Aeronautics Board for a route extension to the continental United States. As the district court found (R. 5410), the Pan American nominees have refused from the beginning of federal regulation to allow the joint company to request a route to the mainland, and when the issue became critical Pan American even boycotted Panagra board meetings in order to preclude a quorum from discussing or voting on the question. The Board has made plain its recognition that Panagra has been excluded from the United States solely by Pan American's exercise of the power conferred upon it by its role in the Panagra enterprise. *Additional Service to Latin America,* 6 C.A.B. 857, 914. As a result of Panagra's exclusion, Pan American's control of more than 80 percent of the United States flag traffic on the Canal Zone-United States route was secured from attack. In addition, the exclusion protected Pan American's traffic between South America and the United States from the effective competition of another carrier able to operate on the entire route to Buenos Aires.

1. *Pan American's Exclusion of Panagra from the Canal Zone-United States Route Constituted Monopolization in Violation of Section 2*

a. In the circumstances of this case, Pan American's power to exclude a single competitor, Panagra, constitutes monopoly power. The Sherman Act is con-

cerned with reductions in the vigor of competition, not solely with the number of parties who may be affected by a restraint. Hence the group boycott of even a single firm transgresses Section 1. *E.g., Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207. Similarly, the attainment of a monopoly position should not be held beyond the reach of Section 2 merely because in the particular circumstances only one other company was excluded by the monopolist. Thus, the Court has characterized as monopolization a newspaper's elimination of a single radio station which was its only substantial competitor for advertising. *Lorain Journal Co.* v. *United States*, 342 U.S. 143, 154. No suggestion appears in the Court's opinion that the newspaper in the *Journal* case could have excluded more than one station or a competing newspaper.[2]

[2] Like *Lorain Journal*, *supra*, two of the remaining three cases cited by Pan American on this issue (Br. 44) held that the exclusion of a single competitor was illegal monopolization. *Gamco, Inc.* v. *Providence Fruit & Produce Bldg., Inc.*, 194 F. 2d 484 (C.A. 1), certiorari denied, 344 U.S. 817; *United States* v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn.). In the third case, *Mackey* v. *Sears, Roebuck & Co.*, 237 F. 2d 869 (C.A. 7), petition for certiorari dismissed by stipulation of the parties, 355 U.S. 865, the court of appeals held that the complaint's allegation of "an intent by Sears to destroy any business in which the plaintiff might engage and thereby instill fear in its other suppliers" (*id.* at 873) did not amount to an allegation of monopolization of the particular market involved (nursery lamps). Similarly, the court of appeals said that the complaint had no allegations that defendant's acts had lessened competition "to the slightest extent" (*ibid.*). Here, in contrast, the district court found that Pan American had in fact monopolized South American-United States and Canal Zone-United States air transportation.

eign pentration of the market is largely due to what may proye to be a temporary condition—the low-fare services provided by a number of these carriers. *Report on Proposed South American Route Patterns*, accompanying the institution of the *United States-South American Route Case*, Order No. E-17289 (CAB Dkt. No. 12895, August 8, 1961), p. 20. The Report says that the imminent development of a single noncompetitive fare structure for all international carriers will reduce the appeal of the foreign carriers to United States nationals (*ibid.*).

Pan American and Panagra are even more dominant as to American flag traffic to South America than as to South American-United States traffic generally. The district court found Pan American is the overwhelmingly dominant United States flag airline to South America (R. 5400–5401). Its share of United States flag traffic with South America is almost 50 percent (R. 1388–1394). Pan American and Panagra together have in recent years carried from 75 to 88 percent of American flag traffic to South America (R. 5400).

b. Pan American argues that it has not really excluded Panagra from the Canal Zone-United States segment of the South American market. Initially Pan American asserts (Br. 36) that Panagra has not been excluded because Panagra aircraft fly to Miami under the Through Flight Agreement of 1946 with Pan American, and on to New York under the interchange agreement with National Airlines. But this agreement was not reached until after Pan American had used its monopoly power to block any access by

or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

SECTION 412. (b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this chapter, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this chapter; except that the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

> SECTION 414. Any person affected by any order made under sections 1378, 1379, or 1382 of this title shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in section 12 of Title 15, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

INTRODUCTION AND SUMMARY

The government's basic contention in this case is that the arrangements between Pan American and Grace, resulting in the formation of Panagra, constitute, in both their inception and subsequent operation, a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act. Thus, in our original brief in both Nos. 23 and 47, we demonstrated the illegality of Pan American's joinder with Grace in the Panagra enterprise. As we showed in that brief (pp. 43–47), the illegality of the combination is supported in part by Pan American's restraint of American foreign commerce in air transportation between the Canal Zone and the United States, since this power was conferred upon Pan American by the combination.

Pan American in its original brief chiefly attempts to show that if the district court were correct in holding that the formation of Panagra, the division of its stock, and the concomitant agreements were lawful (contrary to our submission in our original brief), then Pan American ought not to have been held independently to have violated Section 2 of the Sher-

mit that Pan American's reliance upon that decision is misplaced.

First, and most important, Pan American's argument forgets that it has *in fact* excluded Panagra from a direct route of its own to the United States. Indeed, Pan American argues (in the context of its argument that the Board's approval of the Through Flight Agreement gave it immunity) that it is still justified in exerting its power over Panagra to block application for a certificate (Br. 61–72). It surely cannot be argued that there was no power when the power has in fact been, and continues to be, exercised.

Second, the inconclusive manner in which that litigation ended seriously weakens the precedential effect of the *Grace* case. After this Court had granted Pan American's petition for certiorari to review the decision upon which it now relies (328 U.S. 832),[7] Pan American, Grace, and Panagra executed the Through Flight Agreement. They then moved the Court to dismiss the writs of certiorari "on the ground that no controversy between the parties now exists and that these causes have become moot" (Motion to Dismiss Writs of Certiorari, Nos. 4 and 5, Oct. Term 1947, pp. 7–8). The motion was granted "on the ground that the cause is moot." 332 U.S. 827. If the question had come before this Court, the government might have urged, as had the Civil Aeronautics Board in the court of appeals, that the Board is without power to overcome Pan American's obduracy with respect to a Panagra extension. But this Court never had the oppor-

[7] A petition by Eastern Airlines had also been granted (No. 5, Oct. Term 1947, 328 U.S. 832).

tunity to consider this question, and we do not think that this is the proper case in which to decide it. Orderly judicial administration dictates that such a determination be left to a case where a party seeks direct judicial review of a Board determination refusing to consider an application for Panagra to receive a certificate for a route extension—the kind of proceeding involved in *Grace* itself. It is sufficient here that, as we have noted above, Pan American has in fact blocked the Panagra extension.

Third, even if the decision of the Second Circuit is correct so that Grace can file an application with the Board, Pan American still possesses, together with Grace, monopoly power. Pan American and Grace together have the power to block by stipulation the exercise of Board authority, and that power permits Pan American to continue its exclusionary tactics by satisfying the interests not of Panagra but of Grace, a third party. For the Board probably has no authority to compel major route extensions in the absence of an application. *E.g., Panagra Terminal Investigation*, 4 C.A.B. 670, 673. And, unlike persuasion of an independent carrier not to apply for a route, persuasion of Grace not to apply on Panagra's behalf may well fail to supply compensating benefits to the carrier itself.

Finally, Pan American observes (Br. 45) that the power to permit entry into the field of air transportation between the United States and foreign nations lies with the Civil Aeronautics Board and the President and concludes, therefore, that the power to exclude cannot lie elsewhere. As the district court

proved, or required either by the Board order or by the Through Flight Agreement, which the Board approved. The agreement itself contains no provision that Panagra shall never have its own route. Indeed, not a word in the agreement is even addressed to the right of Pan American to block Panagra's route applications.

Pan American argues that the parties to the Through Flight Agreement were impliedly bound not to seek alterations in the circumstances which produced the agreement. A party to an interchange agreement, however, does not violate the agreement if he applies for a direct route to replace the interchange; and on more than one occasion the Board has granted such applications, never intimating that any obligation had been breached. *E.g., Great Lakes-Southeast Service Case,* 27 C.A.B. at 843, 851; *Southern Transcontinental Service Case,* Order No. E–16500 (Dkt. No. 7984), March 13, 1961.

Moreover, there is no indication that the parties to the agreement intended that it permit Pan American to continue to block any Panagra route to the United States. While Pan American contends that the agreement confirmed its right to stop any route application by Panagra, the testimony relied on by Pan American before the Board (Br. 64–67) deals with the prospect of Grace's continued agitation for a direct route for Panagra to the United States. This evidence, at most, suggests that Grace agreed that it would not make further efforts to obtain its own route for Panagra to the United States over Pan American's dissent. This is a far cry from agreement that Grace would never make such a proposal

within Panagra, or that Pan American was entitled to block action by Panagra. Grace's dropping litigation as a weapon in the face of a basic situation that neither Grace nor the Board could alter also falls far short of its accepting either Pan American's possession or exercise of the monopolistic power to vote Panagra stock for the purpose of excluding Panagra's competition. Moreover, while some of the testimony before the Board suggests that Pan American believed that Grace was agreeing not to seek from the Board a route for Panagra to the United States, other portions of the record show that the agreement did not limit Grace or Panagra from seeking a route in any way.*

Regardless of any implied and unexpressed understandings of the parties, the Board did not approve exclusion of Panagra. The Board approves only agreements which are filed with it. Thus, Section 412

* President Roig of Panagra was asked by counsel for Eastern Airlines in the proceeding before the Board whether the agreement "settles the difference about locked Board of Directors in relation to new route applications" (R. 4047). He answered, "No. Only in respect of this one situation referred to in that paragraph. It has no relation to any other situation that might arise" (*Ibid.*). Mr. Roig emphasized that the agreement did not "expressly provide" that a Panagra extension was not to be sought, denied counsel's proposition that "those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States," and reiterated that he "did not so testify, and that is not the fact. The only agreement between us on that point is in these papers" (R. 4047–4048). He pointed out that Panagra and Grace "have accepted this, at least for the moment," although he hoped this was true "for a good long time" and explained the probable cessation of Grace agitation for an extension only on the ground that "you don't keep on running after the trolley after you got aboard" (R. 4048).

noted (R. 5408), the fallacy of this argument is that it "seeks * * * to confound power of admission with power of exclusion. It is the exercise of the latter which the Sherman Act condemns." Neither the Board nor the President can compel an application for a certificate. The history of Panagra shows that the vigorously expressed desires of the Board (see, *e.g.*, *Panagra Terminal Investigation*, 4 C.A.B. 670, 672; *Additional Service to Latin America*, 6 C.A.B. 857, 914) are insufficient to result in a Panagra application for certification to the United States. If the Board had the power to compel entry which Pan American now ascribes to it, Panagra would, in all likelihood, long ago have been certificated to the United States.

2. *Pan American's Exclusion of Panagra from the Canal Zone-United States Route Constituted, at the Least, Attempted Monopolization in Violation of Section 2*

We have contended above that Pan American and Panagra are the dominant air carriers (and particularly American flag carriers) between the United States and South America and that consequently Pan American, by blocking Panagra's extension from the Canal Zone to the United States, monopolized air transportation between the United States and both South America and the Canal Zone. Even if our contentions are not fully accepted, Pan American is, at the very least, guilty of attempted monopolization in violation of Section 2. For, even if the exclusion of Panagra is not considered as monopolization in view of the other carriers on the Canal Zone-United States and South American-United States routes, or because

Pan American's exclusion of Panagra from this route is not considered to be fully effective after Pan American entered the Through Flight Agreement, it is still clear that Pan American's actions were an attempt to monopolize.

Pan American argues (Br. 48–51) that the government failed to prove two essential elements of an attempt to monopolize. First, Pan American claims, the government failed to show that Pan American had a "specific intent" to monopolize (see the cases cited on page 48 of Pan American's brief). On the basis of undisputed facts, however, the court below found that Pan American was motivated (1) in forming Panagra originally by a specific intent to foreclose competition (R. 5388–5389), and (2) in subsequently blocking Panagra route applications by a specific intent to share in virtually all United States flag traffic to South America (R. 5405, 5407). These purposes constitute the "specific intent" which must underlie a finding of attempted monopolization. While Pan American correctly states that "specific intent" is more than intent to do what is done (Br. 49), it errs in concluding that "specific intent" means a deliberate intent to violate the law as such. It is well established that even a good-faith belief that the law is not being violated is not a valid defense under the Sherman Act (see our original brief, p. 70). Thus, it is not important whether Pan American itself characterized the power it sought or retained as "monopoly power" or believed that its conduct was illegal under the Sherman Act. Rather, the government was required to prove only that Pan American intended "to produce

the result which the law condemns." *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 225, 226, note 59. The findings of the district court show that this burden was sustained—*i.e.*, that Pan American did, or, at least, intended to, acquire, and then to maintain, monopoly power.

The patent and trademark cases cited by Pan American on the nature of "specific intent" (Br. 50) are not helpful in an antitrust case such as this which involves no monopoly rights granted by statute, like patents and trademarks. In the patent or trademark context, a violation of Section 2 necessarily means an unlawful extension of the ordinarily lawful right to exclude others which is conferred by the patent or trademark grant. As the defendant is entitled to the monopoly power conferred by the grant, he must be shown to have intended more than the retention of that power if a Section 2 charge is to be sustained. In the present case, Pan American has no such statutory monopoly.

Second, Pan American claims that the government failed to prove that Pan American's actions produced a "dangerous probability" of monopolization (Br. 48). We have seen, however, that the dominant position of Pan American and Panagra in South American-United States traffic created the strong likelihood that this foreclosure of Panagra from entering under its own certificate into the United States would result in the monopolization of air transportation between the United States and both the Canal Zone and South America (see *supra*, pp. 12–17). Moreover, the "dan-

gerous probability" of success in Pan American's attempt to monopolize is shown by the power which it in fact thereby gained. In our original brief (pp. 40–47) we have reviewed, in detail, the extent of that success. It is more than sufficient to constitute what the Civil Aeronautics Board has called "overwhelming dominance in the air transportation pattern to Latin America" by reason of which "Pan American stands unchallenged in its preeminence." *New York-Mexico City Nonstop Service Case*, 25 C.A.B. 323, 329.

II

THE DISTRICT COURT CORRECTLY HELD THAT THE CIVIL AERONAUTICS BOARD DID NOT GRANT PAN AMERICAN IMMUNITY FROM THE ANTITRUST LAWS FOR ITS EXCLUSION OF PANAGRA

In 1946, Braniff received from the Board a certificate to fly between the United States and the west coast of South America. This gave Braniff a considerable advantage over Panagra's service to this same area since the latter had no route to the United States. The question whether the Civil Aeronautics Board has the power to prevent Pan American from blocking Panagra's entry into the United States was in the Supreme Court. Faced with the certain threat of Braniff competition for Panagra and the uncertain resolution of the pending litigation in this Court on the power of the Civil Aeronautics Board to overcome Pan American's obduracy (R. 5414), Pan American and Grace negotiated, as a compromise, a Through Flight Agreement. In *Pan American-Panagra Agreement*, 8 C.A.B. 50, the Board approved the agreement

Panagra to the United States for a number of years. Moreover, such an interchange agreement is not equivalent to service by a single carrier on the basis of its own certificate of public convenience and necessity either from the standpoint of customers or the carrier.*

The Civil Aeronautics Board has made clear that interchange agreements are not the equivalent of certificated routes from the standpoint of the public. Thus, it has frequently granted applications to replace existing interchange agreements with single-carrier service, because of the greater flexibility in scheduling and other conveniences to the public which were thereby achieved. See, *e.g., Great Lakes-Southeast Service Case*, 27 C.A.B. 829, 843, 851.

These two types of operation—under a company's own certificate and through an interchange agreement—are also vastly different in their impact upon the carrier. Panagra operations to the United States under its own certificate would give that carrier all the benefits of free participation in the market. On the other hand, under the interchange agreement, Pan American, as the holder of the authority under which Panagra aircraft fly to Miami, receives a portion of the revenues from Panagra's through flights (R. 1871–1874, 1879–1883), as does National with respect to the flight from Miami to New York. Simi-

* At the trial one of Pan American's chief executive officers admitted that he would unquestionably prefer a certificated route to an interchange for his own airline, recognizing that an interchange is merely "the next best" alternative to one-carrier service (R. 230).

larly, Panagra's right to even the limited participation in the market which it now enjoys depends entirely upon private contract. The Civil Aeronautics Board has no power to compel interchanges in foreign air transportation, and is limited to approving or disapproving such arrangements as suit the convenience of the parties from time to time. See 49 U.S.C. 1374; *New York-Balboa Through Service Proceeding, Reopened*, 20 C.A.B. 493, 503; *National Airlines, Inc.*, 12 C.A.B. 798, 803. Moreover, the Through Flight Agreement applies only to flights between the Canal Zone and Miami, so that Panagra is excluded from the Pacific Coast and Gulf of Mexico areas of the United States. Thus, the Civil Aeronautics Board explicitly rejected the contention that approval of the Through Flight Agreement was tantamount to the grant of a certificate under Section 401 of the Aviation Act, 49 U.S.C. 1371, holding that "the evidence dispels any belief that the control and responsibility will be in Panagra * * *." *Pan American-Panagra Agreement*, 8 C.A.B. 50, 54.

Pan American also argues (Br. 43–44) that the government's claim that Pan American has excluded competition is answered by the decision of the Court of Appeals for the Second Circuit in *W. R. Grace & Co.* v. *Civil Aeronautics Board*, 154 F. 2d 271, certiorari dismissed for mootness, 332 U.S. 827. There, the court of appeals held that the Board had power to entertain an application by Grace in Panagra's behalf for an extension to the United States, if Panagra's failure to apply was the result of "illegality and fraud" on the part of Pan American. We sub-

as "an arrangement between Pan American and Panagra for providing through one-plane service between the principal points on Panagra's routes and the United States" (*id.* at 52), by the movement of Panagra aircraft under charter to Pan American on Pan American's routes. The Board considered the agreement only as an "action eliminating conflict and looking toward harmony" and specifically disclaimed any implication that the agreement was "the preferable method of resolving a controversy" (*id.* at 61).

In considering the Through Flight Agreement, we should emphasize at the outset that not even Pan American argues that, by approving the agreement, the Board shielded the formation of Panagra and the concomitant agreements between Pan American and Grace from prosecution as an illegal combination in restraint of trade under Sections 1 and 3 of the Sherman Act. Any such argument would be utterly untenable. By approving a small aspect of the overall arrangements between Panagra, Pan American and Grace in the face of a situation with which it believed itself powerless to deal in any fundamental manner, the Board cannot be supposed to have precluded an attack upon the underlying source of harm to the public interest.

Pan American's argument is much narrower but equally lacking in merit. Pan American asserts that the Board's approval of the Through Flight Agreement shields from attack under Section 2 Pan American's use of its monopoly power to exclude Panagra from routes to the United States. In our view, the district court was plainly right in holding that no such

immunity was given both because the approval could not immunize past violations and because it did not explicitly, and was not intended to, authorize future monopolization.

A. THE BOARD DID NOT APPROVE, AUTHORIZE, OR REQUIRE THE EXCLUSION OF PANAGRA

The antitrust exemptions authorized by the Federal Aviation Act extend only to specified conduct which has received the approval of the Civil Aeronautics Board. Section 414 of the Act, 49 U.S.C. 1384, grants immunity from the antitrust laws to any person affected by a Board order with respect to any agreement requiring Board approval, but only "insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order." Thus, except as they are part of an agreement, the Board has no power to approve, and to thus immunize, violations of the antitrust laws.

Initially, it is important to note that the Through Flight Agreement was entered into in 1946. If Pan American were correct that the agreement provided that Pan American could block any extension of Panagra's routes to the United States, the Board's approval of the agreement would immunize Pan American from liability under Section 2 of the Sherman Act from that time forward. Plainly, Pan American's earlier activities preventing Panagra's application to the Board were not approved and remain violations of the Sherman Act.

Furthermore, the exclusion of Panagra from the United States after 1946 was not authorized, ap-

of the Aviation Act, 49 U.S.C. 1382, requires the filing with the Board of "a true copy, or if oral, a true and complete memorandum" of agreements whose approval is sought. Cf. *Isbrandtsen Co.* v. *United States,* 211 F. 2d 51, 57 (C.A. D.C.), certiorari denied *sub nom. Federal Maritime Board* v. *United States,* 347 U.S. 990; *River Plate & Brazil Conferences* v. *Pressed Steel Car Co.,* 227 F. 2d 60, 63 (C.A. 2). Since no agreement has ever been filed providing for Panagra's exclusion, no immunity has been given.

Moreover, the Board can grant immunity only on the basis of its explicit approval of an agreement. No immunity may be implied. See *United States* v. *Socony-Vacuum Oil Co.,* 310 U.S. 150, 225–227; *California* v. *Federal Power Commission,* 369 U.S. 482, 485; *Isbrandtsen Co.* v. *United States, supra; American Cooperative Serum Ass'n* v. *Anchor Serum Co.,* 153 F. 2d 907, 912 (C.A. 7), certiorari denied, 329 U.S. 721. Approval requires thorough administrative scrutiny of the arrangement, with the conclusion expressed in precise findings under 49 U.S.C. 1378 and 1382, that the proposed agreement is not inimical to the public interest. Cf. *Isbrandtsen Co.* v. *United States, supra; Isbrandtsen Co.* v. *United States,* 356 U.S. 481, 499; *Isbrandtsen Co.* v. *United States,* 96 F. Supp. 883, 886, 892 (S.D. N.Y.), affirmed by an equally divided Court *sub nom. Rederi* v. *Isbrandtsen Co.,* 342 U.S. 950. The Board's order expresses no approval of some vague, unexpressed understanding that Pan American could continue for an indefinite period to monopolize air transportation between the

Canal Zone and the continental United States; the Board made no specific findings that the exclusion of Panagra was in the public interest. The Board was not required to accept the unexpressed understandings of the parties. Cf. *Swift & Co. v. Federal Maritime Commission*, C.A. D.C., No. 16,288, decided May 24, 1962, slip opinion, p. 8. It could reasonably adhere to its general rule (see *supra*, p. 28) that an interchange agreement does not impliedly include an agreement that the parties will not apply for a direct route to replace the interchange. In short, the Board could properly approve only the interchange agreement itself. This is precisely what the Board did. The opinion of the Board approving the Through Flight Agreement emphasizes the "improvement over the past situation" which the agreement was expected to bring about. 8 C.A.B. at 61. The Board's finding that the agreement was of benefit to the public interest as an improvement over the existing situation in no way suggests that either Pan American's control over Panagra or the resulting exclusion of Panagra from the American market was in harmony with the public interest. Indeed, the Board carefully limited the scope of its determination by stating that "[t]he question presented to us in this proceeding is whether *this agreement* is adverse to the public interest, not whether it or some possible future proposal is the preferable method of resolving a controversy" (emphasis added). 8 C.A.B. at 61. And the Board made clear that it did not consider the agreement a permanent solution to the problem of Panagra's ex-

Agreement, 8 C.A.B. 50, 63. Such findings are required by Section 408 of the Aviation Act, 49 U.S.C. 1378, before the Board can approve, *inter alia*, a Through Flight Agreement. Pan American argues (Br. 68) that this finding conclusively determined the question whether Pan American's refusal to permit a Panagra route application violates the Sherman Act and thus renders the issues in this antitrust case *res judicata*.

This argument, like the others made by Pan American discussed above in Point II.A, is directly contrary to the Board's clear intention not to pass on the exclusion of Panagra. Thus, the Board stated in its approval order that "[t]he question presented [was] whether *this agreement* is adverse to the public interest" (*Pan American-Panagra Agreement*, 8 C.A.B. at 61) (emphasis added), and it found only that "the competitive situation [was] not changed [by the agreement] in such a way as to result in the creation of a monopoly" (*id.* at 57). The issue in this lawsuit, however, is whether the exclusion of Panagra—which led the Board to accept the agreement as the best available alternative—violates the Sherman Act. As the controversy in this case is entirely distinct from the one before the Board, neither *res judicata* nor collateral estoppel are apposite. *United States* v. *Radio Corporation of America*, 358 U.S. 334, 352.

Moreover, even if the Board had decided that exclusion of Panagra was in the public interest,[10] that

[10] Such a decision, of course, might well grant antitrust immunity if all the conditions of Section 414 were satisfied (see *supra*, pp. 27-33).

decision would not be *res judicata* in this case. The public interest standard is plainly not identical with the principles of the Sherman Act, although it includes antitrust policy. Thus, the Court has held that the Interstate Commerce Commission "has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contemplated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act. The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems." *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 79; accord, *United States* v. *Radio Corporation of America*, *supra*, 358 U.S. at 346, 352 (Federal Communications Commission). Similarly, the Civil Aeronautics Board is neither required nor permitted to decide antitrust issues as such in applying the public interest test. Hence the Board's finding that the Through Flight Agreement was not adverse to the public interest is in no respect a finding under the Sherman Act even with respect to the agreement. Similarly, the Board's determination whether the agreement would "result in creating a monopoly" is not a determination whether there has been an attempt to monopolize under the Sherman Act. Since the Board adjudicated no issues under the Sherman Act when it approved the agreement under Section 408, this antitrust suit is not barred. *United States* v. *Radio Corporation of America*, *supra*; *California* v. *Federal Power Commission*, 369 U.S. 482, 486, 490.

remedies with which the antitrust laws protect competitive conditions. As we have shown (*supra*, p. 35), the Board has no power to enforce the Sherman Act as such. Neither criminal proceedings nor damage suits are allowed by the Aviation Act to be brought before the Board. The Sherman Act can be enforced only by the United States, proceeding civilly or criminally in the district courts, and by private parties suing for damages and injunctions.

Pan American suggests (Br. 59–60) that monopolization or attempted monopolization can be reached by the Board as an unfair method of competition under Section 411 of the Aviation Act, 49 U.S.C. 1381. But the power to end unfair competition, even when the challenged practice is also a Sherman Act violation, is not the power to enforce the Sherman Act itself. Cf. *United States Alkali Export Ass'n, Inc.* v. *United States*, 325 U.S. 196, 208, 210. Indeed, even if the Board applied the same standards as in cases under the Sherman Act, the Board's cease-and-desist power is hardly comparable to the injunctive powers which may be exercised by a court. And the Board has no power to compel the divestiture of control which was acquired prior to its establishment. *E.g., National Air Freight Forwarding Corp.* v. *Civil Aeronautics Board*, 197 F. 2d 384 (C.A. D.C.); *Hawaiian Airlines* v. *Trans-Pacific Airlines*, 78 F. Supp. 1 (D. Hawaii).

Third, the limited character of the immunity which Congress specifically empowered the Board to confer demonstrates both that the antitrust laws apply and that Congress did not intend a blanket immunity. The

Aviation Act provides that Board approval shall immunize the parties from prosecution for making and performing agreements approved by the Board. 49 U.S.C. 1384. Certain consolidations or mergers approved by the Board under Section 408, 49 U.S.C. 1378, are similarly exempted from the provisions of the Sherman Act.

In short, here, as in *United States* v. *Borden Co.*, 308 U.S. 188, 206, the Aviation Act plainly "does not cover the entire field of the Sherman Act." The Aviation Act itself "show[s] beyond question how far Congress intended that the [regulatory statute] should operate to render the Sherman Act inapplicable." *Id.* at 201. Certainly, no intention to confer a blanket exemption for the aviation industry appears with the clarity essential to supercession of the antitrust laws. See *United States* v. *Borden Co.*, *supra*, 308 U.S. at 198; *Georgia* v. *Pennsylvania R. Co.*, *supra*, 324 U.S. at 456–457; *United States Alkali Export Ass'n, Inc.* v. *United States*, *supra*, 325 U.S. at 205–206.

This Court has never held that the fact of regulation places an industry beyond the reach of the Sherman Act, or even that any particular regulated industry is completely outside the prohibitions of the Act. On the contrary, its only decisions bearing on this issue, which involved other regulated industries, demonstrate that the Sherman Act applies to such industries except where specific statutory exemptions have been provided by Congress. In *United States* v. *Borden Co.*, 308 U.S. 188, the Court held that neither the Agricultural Marketing Agreement Act nor the Capper-Volstead Act, which conferred upon the Secre-

III

THE CIVIL AERONAUTICS BOARD HAS NEITHER EXCLUSIVE NOR PRIMARY JURISDICTION OF THE MATTERS INVOLVED IN THIS ACTION

Pan American argues (Br. 51–69) that the issues in this antitrust case are for the Civil Aeronautics Board and not the courts to decide. The argument is a composite of three contentions: First, that the Sherman Act does not apply at all to international aviation (Br. 58–59); second, that certain aspects of international aviation, including those involved in this case, are within the exclusive jurisdiction of the Board (Br. 51–52); and third, that certain issues were within the primary jurisdiction of the Board and should have been referred to it for an expression of its views (Br. 54–56). These challenges to the district court's jurisdiction are without merit.

A. THE SHERMAN ACT APPLIES TO INTERNATIONAL AIR TRANSPORTATION

There is no foundation for Pan American's contention (Br. 58) that the Federal Aviation Act, both by letter and spirit, "indicates a Congressional intention to remove the industry from the general antitrust norms of the Sherman Act." The Aviation Act is not so pervasive a regulatory scheme as to indicate such an intention. The specific exceptions to the antitrust laws in the Act show that no general immunity was intended. This Court has never passed upon the contention, but it is notable that the Court has never held with respect to any other industry that the administrative regulation authorized by a federal statute was

so comprehensive as automatically to place the entire industry in all its activities outside the reach of the Sherman Act. The decisions in analogous cases establish a general principle that the Sherman Act applies to regulated industries except where specific statutory exemptions have been provided by Congress.

First, the Aviation Act does not establish an all-pervasive regulatory scheme for international air carriers. The Civil Aeronautics Board has no power over rates and fares of international carriers; the only manner in which its influence can be exerted is the disapproval of agreements among carriers relating to rates and fares. Similarly, the Board has no power to control the service rendered by international air carriers (such as by compelling interchanges like the Through Flight Agreement) save by the crude and unwieldy device of certificating, or threatening to certificate, competing carriers. The Board's regulation includes only control of routes, prohibition of discriminatory practices and unfair methods of competition, and power over agreements, concerted action, and certain relationships between carriers and others. But, even if the Board did have the further power to regulate international air rates, this would not place the entire industry outside the prohibitions of the Sherman Act. For in *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, this Court held that such powers of the Interstate Commerce Commission do not put combinations in restraint of trade by railroads outside the scope of the Act.

Second, the Board has not been entrusted by the Aviation Act with the full range of doctrines and

tary of Agriculture the power to exempt specified agreements from the antitrust laws, had foreclosed the applicability of the Sherman Act to other conduct of those subject to the Secretary's exemption power. Because the Sherman Act is "a broad enactment" favoring free competition and designed to reach all anticompetitive conduct throughout the economy (*id.* at 199), the Court rejected the proposition that, by enacting a regulatory statute with respect to agricultural marketing, "Congress intended to create 'so great a breach in historic remedies and sanctions' " (*id.* at 198). The Court stressed the "cardinal principle of construction that repeals by implication are not favored," and restated its holdings that "[w]hen there are two acts upon the same subject, the rule is to give effect to both if possible": only "'a positive repugnancy' " between statutes would justify a finding of repeal by implication, " 'and even then * * * only *pro tanto* to the extent of the repugnancy.' " *Id.* at 198–199. Otherwise, the two statutes were to be considered " 'merely affirmative, or cumulative, or auxiliary.' " *Id.* at 198.

Only last Term in *California* v. *Federal Power Commission,* 369 U.S. 482, this Court made clear that the Sherman Act applied to regulated industries. There, the government brought a civil antitrust action to have the acquisition of stock by one natural gas company in another such company declared to be a violation of Section 7 of the Clayton Act and to require divestiture. Subsequently, the company which acquired the stock applied to the Federal Power Commission for authority to merge the assets of the two companies,

which was granted. This Court held that the Commission should not have decided the merger application while the antitrust action was still pending in the courts. Thus, the Court held that, despite regulation of the natural gas industry, the transaction was not immune from the antitrust laws since such "[i]mmunity * * * is not lightly implied," and there was "no 'pervasive regulatory scheme' * * * including the antitrust laws that has been entrusted to the Commission." *Id.* at 485.

Although *Far East Conference* v. *United States*, 342 U.S. 570, requires prior resort to an administrative agency under a regulatory statute so that the courts may have the benefit of administrative expertise in areas of special administrative competence, the decision does not suggest complete displacement of the courts' role. To the contrary, the Court affirmed that both the antitrust laws and the Shipping Act apply to steamship conference practices (*id.* at 576), and expressly held that a civil antitrust suit could be initiated after the Maritime Board acted on the challenged practice (*id.* at 577).

Pan American's sole reliance (Br. 58) is upon *United States* v. *Radio Corporation of America*, 358 U.S. 334. It is enough to point out that in that case the issue was whether the Federal Communications Commission had primary jurisdiction, not whether the antitrust laws apply to the television industry at all. The Court unanimously held that the primary jurisdiction doctrine did not apply and that the antitrust laws were enforceable in the federal courts against the television industry.

B. THE ISSUES IN THIS CASE ARE NOT WITHIN THE EXCLUSIVE OR PRIMARY JURISDICTION OF THE CIVIL AERONAUTICS BOARD

The doctrine of primary jurisdiction applies "where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body * * *." *United States* v. *Western Pac. R. Co.*, 352 U.S. 59, 64. In determining whether issues are within the special competence of an administrative body, this Court has noted whether "the expert and specialized knowledge of the agenc[y is] involved" (*ibid.*), whether the issues are "within the conventional experience of judges," and whether the case requires exercise of administrative discretion. *Far East Conference* v. *United States*, 342 U.S. 570, 574.

The district court correctly held that the issues raised in this case were not within the primary jurisdiction of the Civil Aeronautics Board. The basic issue is whether the formation of Panagra, the division of control, and the concomitant agreements going back to a period antedating all administrative regulation, were in the inception of the combination, as well as in its subsequent implementation, a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act. In our view the Board has no jurisdiction whatever to deal with that question. We can find no provision of the Aviation Act that gives the Board any power to inquire into it or to take steps to eliminate the evil if it is found that the combination is unlawful. The Board's view is indicated by

the fact that it requested the Department of Justice to institute this action as the only available remedy for an intolerable situation. The Board has no jurisdiction because, to paraphrase the words of the Court in *Georgia* v. *Pennsylvania R. Co., supra*, 324 U.S. at 456, "Congress has not given the [Board] * * * authority to remove [pre-1938] rate-fixing combinations from the prohibitions contained in the anti-trust laws. It has not placed these combinations under the control and supervision of the [Board]. Nor has it empowered the [Board] to proceed against such combinations and through cease and desist orders or otherwise to put an end to their activities." The soundness of this position is virtually conceded by Pan American's admission (Br. 52) that "[i]t may be that *if this action had resulted* either *in sustaining* or dismissing *the complaint, no harm would have been done to the CAB's jurisdiction and function*" (emphasis added).

Contrary to Pan American's contention (Br. 52), this case does not concern the route pattern in South America. A decree in favor of the government will establish no route and will grant no certificates of public convenience and necessity. While, as Pan American also argues, some of the practices attacked by the government in this case might be dealt with as unfair competition under Section 411 of the Aviation Act, it is plain that any relief granted could not go to the basic evil of the combination of Pan American and Grace as co-owners of Panagra, each with full power to prevent Panagra from doing anything to injure the selfish interest of either owner. Just as the power of the Federal Trade Commission to remedy

unfair methods of competition does not bar the United States from maintaining antitrust suits based on the same acts (*United States* v. *Charles Pfizer & Co., Inc.*, 205 F. Supp. 94 (S.D. N.Y.) (criminal); *United States* v. *Cement Institute*, 85 F. Supp. 344 (D. Colo.) (civil)), so the limited power of the Board as to unfair competition should not bar this action. The issues involved here are within the competency of judges—having been considered by the courts since the Sherman Act was passed in 1890. There is therefore no reason why proceedings to check unfair methods of competition and suits to remedy violations of the antitrust laws should not be handled in accordance with the procedure which Congress has established for each.

The cases cited by Pan American (Br. 58) are clearly inapposite. In *United States* v. *Radio Corporation of America*, 358 U.S. 334, 346–347, the Court distinguished "fully regulated industries," such as rail and water transportation, where primary jurisdiction applied, from industries such as television, which had no rate regulation. The Court held that in the latter areas, "there being no pervasive regulatory scheme, and no rate structures to throw out of balance, sporadic action by federal courts can work no mischief. The justification for primary jurisdiction accordingly disappears." *Id.* at 350. Here, as in the television industry, the Board has no power over the rates charged by international air carriers. And, as we have shown (*supra*, pp. 36–41), the industry is not governed by a "pervasive regulatory scheme."

In *S.S.W., Inc.*, v. *Air Transport Ass'n*, 191 F. 2d 658 (C.A. D.C.), certiorari denied, 343 U.S.

955, and in *Apgar Travel Agency, Inc.* v. *International Air Transport Ass'n*, 107 F. Supp. 706 (S.D. N.Y.), the plaintiffs charged concerted action pursuant to agreements which could be, but had not been, approved by the Civil Aeronautics Board. Therefore the courts held that relief could only be had from the Board, which could exempt the challenged conduct from the antitrust laws. The injunctive relief sought in those cases was available from the Board. Cf. *Isbrandtsen Co.* v. *United States*, 211 F. 2d 51 (C.A. D.C.), certiorari denied, *sub. nom. Federal Maritime Board* v. *United States*, 347 U.S. 990. And as the court held in *Slick Airways, Inc.* v. *American Airlines, Inc.*, 107 F. Supp. 199 (D. N.J.), appeal dismissed, 204 F. 2d 230 (C.A. 3), certiorari denied, 346 U.S. 806, plaintiffs could recover their damages after the conclusion of the administrative proceedings with respect to injunctive relief (see 107 F. Supp. at 203), for the Board has no power to grant damages. The *S.S.W.* and *Apgar* cases thus merely apply the rule of *Far East Conference* v. *United States, supra*, 342 U.S. at 576, that conduct which violates both the regulatory statute and the antitrust laws must be challenged before the administrative agency and not the courts in the first instance. Cf. *River Plate & Brazil Conferences* v. *Pressed Steel Car Co.*, 227 F. 2d 60, 63 (C.A. 2).

Nor is the decision of the court of appeals in *W. R. Grace & Co.* v. *Civil Aeronautics Board*, 154 F. 2d 271 (C.A. 2), certiorari dismissed for mootness, 332 U.S. 827, authority for the application of the primary jurisdiction rule to this case. In *Grace*, the Board held that it could consider the illegality under

clusion from the United States, for the Board gave approval to the agreement for only three years despite the fact the agreement itself was for 99 years. *id.* at 64.' In short, there is no basis for inferring that, when the Board approved an agreement to ameliorate the consequences of Pan American's monopolistic conduct, it thereby approved the misconduct itself.

Similarly, the Board gave no indication during the proceedings relating to the agreement which supports Pan American's claim that approval, and hence immunity, was implied. Pan American quotes (Br. 67) a statement by the chairman of the Board that "[o]f course our approval of the agreement gives you immunity from the Sherman Act." This observation was made during a colloquy between the chairman and counsel for Panagra concerning the status of the Through Flight Agreement itself under the antitrust laws, in which the chairman asked whether "this agreement would be a violation of the Sherman Act except for approval by the Board" (R. 3906). After Panagra's counsel admitted his inability to answer (*ibid.*), Chairman Landis made the quoted statement. When counsel for Panagra added that the question was complicated by "Panagra's peculiar relationships to Pan American" (R. 3907), the chairman precluded the interpretation which Pan American would assign to his earlier statement by explaining that he was

---

'The approval has since been extended until 1965 or 90 days after the expiration of this antitrust suit, whichever is sooner. Order No. E-16156, December 19, 1960.

"not talking about the other phases of it but * * * just about this agreement" (*ibid.*).

Any suggestion that the Board approved the conduct of Pan American, in excluding Panagra from the United States, is inconsistent with its general opposition toward restraints upon the freedom of carriers to apply for route certificates. Thus, in *Pan American-Matson-Inter-Island Contract*, 3 C.A.B. 540, the Board rejected a proposal for the establishment of a Panagra-type joint company to serve Hawaii, holding that "[a]greements * * * whereby a carrier operating in a particular territory obtains from a prospective competitor an undertaking, express or implied, not to attempt competitive operations, are likely to tend to impede the development of competition to the extent required by the present and future needs of the nation. Accordingly, we are of the opinion that such agreements thwart the purposes of the [Aviation] Act, and that their formation should in general be discouraged" (*id.* at 546–547). In view of the Board's explicit hostility to the very conduct of Pan American in the present case (see *infra*, pp. 46–47), as well as in similar proposals, it cannot be said to have nonetheless approved and immunized the exclusion of Panagra by implication when approving the Through Flight Agreement.

B. THE BOARD'S APPROVAL OF THE AGREEMENT IS NOT *RES JUDICATA*

The Board found that the Through Flight Agreement "is not adverse to, nor inconsistent with, the public interest, [and] that such transaction does not result in creating a monopoly." *Pan American-Panagra*

Section 411 of Pan American's conduct with respect to Panagra in determining whether to entertain a route application by Grace in Panagra's behalf. Nothing in the court's opinion suggests that the Board has power to decide antitrust issues as such, or that Pan American's refusal to permit a Panagra application could not violate the Sherman Act if it were an unfair method of competition under Section 411 as well. The court merely held that the Board was not required to await the outcome of a lawsuit under the Sherman Act before deciding the issues involved in the question of its own jurisdiction as to a Grace application on behalf of Panagra. Compare *California* v. *Federal Power Commission*, 369 U.S. 482. It did not hold that a lawsuit to enforce the Sherman Act would be required to await the outcome of a Board proceeding under Section 411.

The inapplicability of the primary jurisdiction rule to this antitrust case does not leave the courts with the task of acting without knowledge of the Board's views. The Board's opposition to Pan American and Grace's control of Panagra has been repeatedly expressed. *Pan American-Matson-Inter-Island Contract*, 3 C.A.B. 540; *Panagra Terminal Investigation*, 4 C.A.B. 670; *Additional Service to Latin America*, 6 C.A.B. 857; *Pan American-Panagra Agreement*, 8 C.A.B. 50; *New York-Balboa Through Service Proceeding, Reopened*, 18 C.A.B. 501; *New York-Balboa Through Service Proceeding, Reopened*, 20 C.A.B. 493; cf. *New York-Mexico City Nonstop Service Case*, 25 C.A.B. 323. This opposition is also shown in the Board's request that the United States

bring this antitrust case; in the Board's *amicus curiae* brief below; and in the Board's approval of the form of the judgment entered by the district court (R. 5436). The decree entered by the district court ensures that the views of the Board will be considered in the formulation of a detailed plan of divestiture, since the parties are directed to secure Board approval of whatever plan they submit to the court. Thus, in contrast to *United States* v. *Western Pac. R. Co.*, 352 U.S. 59, 64, where the Court found that "the purposes [the primary jurisdiction doctrine] serves will be aided by its application in the particular litigation," referring the issues in this case to the Board can serve no purpose other than delay.

IV

DIVESTITURE OF BOTH PAN AMERICAN AND GRACE'S INTEREST IN PANAGRA IS THE PROPER REMEDY IN THIS CASE

While the district court did not provide a detailed plan, it held that divestiture was the only effective remedy for Pan American's violation of Section 2 (R. 5445) and therefore its decree ordered divestiture of Pan American's interest in Panagra (R. 5441). Under numerous decisions of this Court, the district courts are clothed with broad discretion in framing relief in antitrust cases. *E.g., United States* v. *E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 322–323. We submit that in this case the district court did not abuse its discretion; on the contrary, its determination was plainly correct.

The district court did not order Grace to divest itself of its interest in Panagra because it found no violation by Grace of the Sherman Act. If, however, as we argued in our original brief, Grace's control of Panagra, like Pan American's, violates Sections 1 and 3 of the Sherman Act, divestiture is plainly the only effective remedy. Therefore, we submit that Grace, as well as Pan American, should be ordered to divest itself of its interest in Panagra.

DIVESTITURE IS NORMALLY THE APPROPRIATE REMEDY FOR VIOLATIONS OF THE ANTITRUST LAWS CAUSED BY INTERCORPORATE COMBINATIONS

In *United States* v. *E. I du Pont de Nemours & Co.*, *supra*, this Court held that divestiture is the appropriate "remedy for Sherman Act violations whose heart is intercorporate combination and control." 366 U.S. at 329. Nonetheless, Pan American urges (Br. 72–73) that the infrequency with which divestiture has been ordered should compel reluctance to grant the remedy. But while violations on a scale requiring divestiture may well be relatively few in number compared with the incidence of lesser restraints on competition, the fact remains that divestiture has uniformly been found necessary to protect the public against illegal intercorporate relationships such as that between Grace, Pan American, and Panagra. *Id.* at 329–330, note 11. We recognize that the district court found Pan American's violation to consist in the voting, and not the ownership, of its Panagra stock. But, as Pan American observes (Br. 25–28), the exclusion of Panagra was a mere exercise of the "normal incidents of ownership." The monopolistic restraint imposed upon Panagra's development was

merely a consequence of Pan American's role as the holder of a 50 percent interest in Panagra. And, as we have argued in our original brief, the basic anti-trust violation with which this case is concerned is the combination of Pan American and Grace in the Panagra enterprise. We therefore submit that, as in *du Pont*, the "heart" of Pan American and Grace's anti-trust violations "is intercorporate combination and control" for which divestiture is presumptively the appropriate remedy.

The wisdom of the presumption favoring divestiture in cases such as this one becomes apparent when Pan American's proposal for lesser injunctive relief is examined. Pan American argues (Br. 75) that the violation can be remedied by an injunction which would bar Pan American from voting in such a way as to interfere with Panagra's filing of route applications. But the record shows that Pan American's obstruction of a Panagra extension to the United States has taken a variety of forms, including not merely the refusal of Pan American's nominees on the Panagra board to vote in favor of an application, but even the boycotting of board meetings at which the subject would be discussed. No doubt a wide range of other practices could serve the same monopolistic end. Injunctive relief would have to be framed either with almost impossible specificity or in a manner so broad that any alleged contempt would require extended litigation. Similarly, an injunction which would not deny Pan American the normal incidents of its Panagra stock ownership would require differentiation between opposition to an extension based upon unlawful motives and opposition based upon legiti-

can's brief as appellant. In contrast to the extended showings made in *du Pont, supra* (see 366 U.S. at 320), Pan American offered no proof, or even detailed allegations, with respect to the facts upon the basis of which it attacks the district court's determination. Surely, the district court's exercise of its broad discretion should not be overturned when Pan American has failed even to make a serious showing that the remedy was inappropriate. As this Court has stated, "once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor." *United States* v. *E. I. du Pont de Nemours & Co., supra,* 366 U.S. at 334.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the district court should be affirmed insofar as it orders the divestiture of Pan American's interest in Panagra.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 47.

UNITED STATES OF AMERICA,

Appellant,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., and PAN AMERICAN-GRACE AIRWAYS, INC.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR W. R. GRACE & CO.

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mate business considerations. Such a distinction would be extremely difficult to apply (compare our original brief, pp. 73–74; *Standard Sanitary Mfg. Co. v. United States*, 226 U.S. 20, 49). In short, as this Court put it in *du Pont, supra*, 366 U.S. at 334, "an injunction can hardly be detailed enough to cover in advance all the many fashions in which improper influence might manifest itself. And the policing of an injunction would probably involve the courts and the Government in regulation of private affairs more deeply than the administration of a simple order of divestiture."

Two other considerations support the remedy of divestiture. A limitation on Pan American's right to vote its Panagra stock would, as the Court suggested in *du Pont, supra*, have extremely harmful effects. It would, first, "create a large and permanent separation of corporate ownership from control, which would * * * run directly counter to accepted principles of corporate democracy" (366 U.S. at 333), and alter to an undesirable degree Panagra's internal corporate structure, "established under state corporation law" (*ibid.*). Moreover, since Grace's exercise of control over Panagra is also unlawful, as shown in our original brief, there is really no alternative to divestiture. Obviously, both companies cannot be limited in their right to vote, since they hold all of Panagra's stock. And certainly the considerations advanced in our original brief are enough to show that the increase in Grace's control flowing from the sterilization of Pan American's holdings would be contrary to the public interest.

B. THE TAX AND MARKET CONSEQUENCES, AND THE HARDSHIPS WHICH WOULD RESULT FROM DIVESTITURE, DO NOT DICTATE A LESSER REMEDY

Pan American has put forward in the present case the same arguments against the "natural remedy" of divestiture (*United States* v. *E. I. du Pont de Nemours & Co.*, *supra*, 366 U.S. at 329) that were explicitly rejected in *du Pont*—the adequacy of lesser injunctive relief, the tax and market consequences of the decree, and the hardship inflicted by divestiture upon the parties and their stockholders. As in *du Pont*, none of these considerations can justify less thorough relief than divestiture.

The tax and market consequences of divestiture, and its hardship upon the parties and their stockholders, are not appropriate considerations in dealing with the question of relief in this case. This Court's decision in *du Pont*, *supra*, makes plain that these factors have a legitimate bearing only when there is a choice between "two or more effective remedies." 366 U.S. at 327. When, as we have seen, divestiture is the only effective remedy, the hardship arguments advanced by Pan American are irrelevant.

In any event, Pan American's arguments come too late for serious consideration in the present case. Although they rest largely upon factual matters, Pan American's sole presentation on this issue to the trial court consists of twenty pages of argument (not evidence)—which neither the government nor Pan American viewed as sufficiently important to designate for printing in the transcript of record in this Court [11]—and fifteen pages of argument in Pan Ameri-

[11] The transcript of the hearing on relief held on April 24, 1961, is in the original record certified by the clerk of the district court.

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Note, Restrictions on Entry of Surface Carriers Seeking to Fly, 71 YALE L. J. 1529 (1962) 95

Oppenheim, *Federal Anti-trust Legislation: Guideposts to a Revised National Anti-trust Policy*, 50 MICH. L. REV. 1139, 1176-77 (1952) 42

Puffer, *Air Transportation* (Blakiston, 1941, p. 53-54) 20

Report of the Attorney General's National Committee to Study the Antitrust Laws (1955) p. 83 ..... 42, 44

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(b) If there was, prior to 1938, an unlawful allocation of territories, does it warrant present relief against Grace?

2(a) Does the steamship service operated by Grace Line, a wholly owned subsidiary of Grace, between the eastern coast of the United States and the western coast of South America, form a part of the competitive market which includes the air service operated by Pan American-Grace Airways, Inc. (hereinafter "Panagra") in that area?

(b) If these services are in the same competitive market, did Grace's 50% participation in the organization and development of Panagra, while it owned all of the stock of Grace Line, constitute a combination in restraint of trade violative of Section 1 or Section 3 of the Sherman Act, such that relief is warranted against Grace?

Statement.

This suit was commenced in January, 1954 in the United States District Court for the Southern District of New York. In 1958 the Government and Pan American submitted a proposed consent decree which District Judge Murphy declined to approve. Trial was had in May 1959. The opinion of Judge Murphy was handed down in March 1961, and judgment was entered in May, 1961.

Grace is the only one of the three parties actively involved in the appeals from the judgment in this case which supports that judgment in its entirety. Grace believes that the opinion of the District Court accurately states the relevant facts. Judge Murphy's findings are, of course, entitled to great weight since this Court has made it plain that in a case like this it will not "try the case *de novo* on the record," *United States* v. *Yellow Cab Co.*, 338 U. S.

338, 340-41 (1949), and that there is a "narrow scope of review" in this Court with respect to issues of fact in anti-trust cases. *Besser Mfg. Co.* v. *United States*, 343 U. S. 444, 446 (1952). Judge Murphy's opinion, like the opinion in the *Yellow Cab* case, was "prepared with obvious care" (338 U. S. at 341).

The statement set out in the brief submitted by the Government is deficient, both in its omission of important material and in the emphasis, or lack of it, put upon various factors. The statement in the brief of Pan American filed in the appeal in No. 23 suffers even more severely in these respects. These defects of omission and emphasis will be corrected in the course of our argument. We believe it appropriate at the outset, however, to bring to the Court's attention certain unique features of this litigation. These unique features can best be delineated by reference to certain anomalies which inhere in the Government's position.

The first anomaly is that the Government seeks, not only to divest Pan American, the perpetrator of a restraint of trade, of the stock interest which it has used as the instrument of restraint, but also to invoke the remedy of divestiture against Grace, the principal opponent and victim of the restraint.

On a reading of Judge Murphy's opinion and of the Government's brief, it soon becomes evident that the principal problem which gave rise to this litigation, and the significant restraint at which the Government's case is aimed, is Pan American's persistent blocking of any application by Panagra to extend its routes to the continental United States. One result of this restraint is that Panagra has been, and now remains, the only American international air carrier without its own terminal in the United States. The record is clear that the party who resisted Pan American and attempted to secure an extension of Panagra's routes was Grace.

Indeed, since Pan American and Grace has each at all times owned one-half of the stock of Panagra and since each has at all times elected one-half of the Board of Directors of Panagra, without Grace's persistent advocacy of Panagra route extensions, no issue would have arisen and Panagra's development would have been even more effectively suppressed. As owner of 50% of the stock of Panagra, Grace was the only party, apart from the general public, injured by Pan American's restraint. Yet, the Government charges Pan American and Grace equally with antitrust violation and seeks the same remedy against both.

The second anomaly is that, while the Government has charged a combination and conspiracy between Pan American and Grace to allocate territories in violation of the antitrust laws, it has characterized the relationship between Grace and Pan American as one of "bitter quarrel" and "impasse."* This would, perhaps, not be surprising if the "impasse" and "bitter quarrel" related to matters other than, and extraneous to, the areas in which the Government alleges combination and conspiracy. But this is not the case. The impasse and bitter quarrel have existed for more than a generation with respect to the very restraint upon which the Government bases its case. The record shows, the District Court found, and the Government admits, that since 1938, when the coming of age of international aviation and the enactment of the Civil Aeronautics Act made it feasible, Grace has persistently sought to extend Panagra's routes to the United States and Pan American has persistently opposed and blocked that extension. For example, when in 1938 Grace sought the approval of Pan American for the making of an application by Panagra for the

* Trial Brief for the United States, Part I, p. 2; Brief for the United States in Nos. 23 and 47 (hereinafter referred to as "Brief"), p. 11.

extension of its route to the United States, the minutes of the Board of Directors of Pan American recorded:

> "Mr. Trippe reported to the meeting on the status of negotiations with W. R. Grace & Co. It was the sense of the meeting that it would not be in the interest of our stockholders [Pan American's] for our directors to authorize an application by Pan American-Grace Airways, Inc. to extend north of Cristobal in competition with Pan American Airways, Inc." (G-182, R. 711; see R. 5405).*

This is what the "bitter quarrel" and "impasse" have been all about.

The third and final anomaly helps, perhaps, to explain the first two. This anomaly resides in the fact that the Government has made it clear that the ultimate purpose and objective of this litigation, in so far as it relates to Grace, is not the vindication of the antitrust laws or the effectuation of their policy, but rather the accomplishment of certain objectives which the Department of Justice has believed would be helpful to the Civil Aeronautics Board in administering the Federal Aviation Act. As Judge Murphy pointed out in his opinion:

> "The ultimate objective of the government is to facilitate the merger of defendant Panagra with

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* The Government's Exhibits, which were introduced in evidence at pages 868-979 of the original transcript, are hereinafter referred to as "G-000"; the Government's Statistical Exhibits, introduced at page 12 of the transcript, are hereinafter referred to as "GS-000"; Grace's Exhibits 1 through 173, which were introduced at pages 800-17 of the original transcript, are hereinafter referred to as "WRG-000"; Pan American's Exhibits, which were introduced at page 359 of the original transcript, are hereinafter referred to as "P-000." The places in the record at which these exhibits were introduced in evidence will not be referred to hereafter.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 47.

UNITED STATES OF AMERICA,

Appellant,

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., and PAN AMERICAN-GRACE AIRWAYS, INC.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR W. R. GRACE & CO.

Questions Presented.

The questions presented by this appeal are the following:

1(a) Did W. R. Grace & Co. (hereinafter "Grace") and Pan American World Airways (hereinafter "Pan American") agree to allocate territories for the providing of air transportation services between the United States and Latin America and within Latin America and thereby unlawfully restrain the foreign commerce of the United States?

A. Competition between U. S. flag airlines in South America prior to 1938 was economically impossible.

In these days of mammoth jet liners and modern airports, it is difficult to recall and appreciate the circumstances in which air transportation was conducted by an American company in a foreign country in 1929—one year after Lindbergh's historic flight. Some idea of what it was like to fly the United States mail from Buenos Aires over the Andes to the Canal Zone in the equipment used in those days is conveyed by a published journal of the first recorded air mail flight in October, 1929 (R. 4661-73). Such a flight was a challenge and an adventure. The same feeling of adventure was given classic literary expression in "Night Flight" (The Century Co. 1931), where, in Chapter III Saint-Exupery described the French air mail service from Santiago to Buenos Aires and Rio de Janeiro.

Some of the practical problems of international aviation were described by the Federal Aviation Commission in 1935 as follows:

> "The fact that the foreign lines are necessarily self-contained has also to be reckoned with. No government can engage in great engineering undertakings outside its own borders. It is impossible for the Department of Commerce to set up lights and radio stations in Central America or the Orient, and in many cases the countries concerned have found no adequate reason to provide facilities themselves. It has been necessary for the air lines to build their own landing fields, provide their own meteorological service, maintain their own communications systems, and install their own lights if night flying were to be attempted. All that has been supplementary to the development of operating and traffic organizations and the maintenance of offices

> in many lands and working in many languages, and the establishment of good standing with the governments and peoples through whose territory the lines must pass. It is impossible that all that should be done, involving as it does a very heavy capital outlay, without some definite assurance of a continuance of governmental aid over a considerable period" (Sen. Doc. No. 15, 74th Cong. 1st Sess. pp. 88-89 (1935)).*

During these early days an American airline operating in this area was also faced with vigorous competition from foreign airlines which were seeking to develop their own routes. One such effort was a proposed combination in 1929 of Scadta, Faucett and LAB in cooperation with the Chilean authorities to establish a route between Colombia, Ecuador, Bolivia and Chile (WRG-32, R. 4684). Panagra was kept informed of this effort, which also involved Nyrba, the French affiliated company Latecoere, and the Curtiss interests, by the State Department (WRG-34, R. 4686). Another company on the scene was the Tri-Motor Company which, as Grace understood, was not an American company despite its place of incorporation, but was rather backed by the British steamship company, the Royal Mail Steam Packet Co. (WRG-35, R. 4687-88). In addition to the combination of these companies an effort was made by LAB to obtain a monopoly in Bolivia which would have effectively barred to Panagra this alternative route across the Andes (WRG-36, R. 4688-89). At the suggestion of Grace (WRG-37, R. 4690), the State Department instructed the American Minister in Bolivia "to make representations against any monopoly [tending to] restrict [the] opportunity [of an] American company" (WRG-38, R. 4691).

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* An excellent description of the problems faced by Panagra in these first few years will be found in a letter dated May 6, 1935 which appears in the record (WRG-41, R. 4698-4703).

In the light of the difficulty of undertaking air transportation in South America during this period, the extent of the potential foreign competition, and the vital interest of the United States in the development of United States flag air services,* various departments of the United States Government soon developed a policy designed to stimulate, encourage and support United States flag lines. The basic elements of this policy during the 1930's were to provide financial support to United States flag lines, to assist them in securing the necessary concessions from foreign countries, and to assist them in meeting foreign competition. In order to achieve these purposes, these agencies adopted a policy of encouraging United States flag air lines not to parallel one another's routes. That policy, as Judge Murphy found, made the operation of more than one United States flag carrier on any particular route impossible.

The first United States legislation designed to subsidize international commercial aviation was the Foreign Air Mail Act of 1928, 45 Stat. 248 (70th Cong. 1st Sess.) which was approved by the President on March 8, 1928. This Act provided for the letting of contracts by the Postmaster General for the transportation of air mail to foreign countries for periods of not more than ten years at fixed rates per pound carried per mile flown. The Foreign Air Mail Act of 1929, 45 Stat. 1449 (70th Cong., 2nd Sess.), similarly provided for the letting of contracts "On routes between the United

* The legislative history of the foreign air mail legislation evidences this vital interest. House Report 481, 70th Cong., 1st Sess. (1928), particularly pages 1 and 2. It was then "an established principle of our international policy that among the Foreign Relations of the United States as they fall into categories, the Pan American policy takes first place in our diplomacy." Secretary of State Kellogg in January 1928 as quoted in Matthews "Why America Is Vital To Us", *New York Times Magazine*, p. 17 (April 26, 1959).

The State Department also pursued this same policy. It aided the carrier which had been awarded an air mail contract over all other companies in the territory covered by its route (*Id.* at 2461). The State Department expressed itself as being concerned that if competition were permitted between American companies it was "possible that no American company would obtain the desired privileges" from the South and Central American governments (*Id.* at 2462).

One incident strikingly illustrates the policy pursued by the State Department during this period. In a letter to the Postmaster General dated June, 1929, Secretary of State Henry L. Stimson described the difficult diplomatic situation created by the rivalry between Pan American and a company called Latin American Airways, both of which were seeking concessions in Guatemala. Secretary Stimson went on to say that the American Minister in Guatemala had arranged what the Government would now stigmatize as a "division of territories" between the companies as follows:

> "The American Minister at Guatemala City recently reported that he had succeeded in persuading the two companies to abandon their activities against one another upon the understanding that Pan American Airways would seek permission to extend its Miami-Cristobal service to Guatemala and El Salvador, while the Latin American Airways would seek permission to establish a service from the Mexican frontier to Guatemala City" (*Id.* at 2462-63).

The 1935 report of the Federal Aviation Commission cited above similarly recognized the important interest of the United States in stimulating the development of United States flag air lines on international routes. The report

noted that "The policy of the United States should be to support and assist American Airlines in their relations with foreign governments and with foreign competitors" (Sen. Doc. 15, 74th Cong., 1st Sess., p. 91). The report also made the following significant recommendation:

> "The status of American air transport in foreign fields competing with foreign-owned airlines should in general not be one of competition between American lines, but of carefully controlled regional monopoly" (*Id.* at p. 88).

In commenting on this recommendation the Commission stated:

> ". . . an air line operating internationally has to be a self-contained enterprise and provide its own facilities to a much greater extent than any domestic line is required to do, and that it has to meet foreign competition. If American air lines are to compete with lines under foreign direction it would be an obvious absurdity to divide the American strength by competition among a multiplicity of American-flag enterprises. The aid that is appropriated for foreign air transport in any particular part of the globe ought not to be squandered by dividing it among two or more competitors who will use government-provided funds to duplicate each other's facilities" (*Id.* at p. 88).

Adherence to these policies by the United States Government made it economically impossible during the late 1920's and 1930's for more than one United States flag air line to engage in air transportation on any single international route. Judge Murphy so found:

> "Competition among American carriers under the policy of the Post Office Department under the

IV.

Grace agrees with the Government that competition in air transportation between South America and the continental United States has been restrained. The District Court correctly concluded, however, that this restraint of competition was the result of the unilateral and unlawful actions of Pan American.

Pan American, over the strenuous opposition of Grace since 1938, has limited Panagra to routes south of the Canal Zone for the sole purpose of preventing Panagra from competing with Pan American. Pan American's one-half interest in Panagra did not give it the right to prevent Panagra's logical development, in competition with Pan American. In view of Pan American's dominant position, its intent to prevent competition, and the limited number of potential competitors in this particular market, Pan American's restraint of Panagra's development violated Section 2 of the Sherman Act.

Pan American's action is not justified by the economic arguments which it now advances against Panagra's extension. Those arguments, which were advanced for the first time at the trial of this case, never formed the basis of its action. The Civil Aeronautics Board was the proper agency to determine whether extension of Panagra's routes was economically sound and in the public interest; Pan American prevented the Board from making this determination by blocking Panagra from submitting any application to it. The Board has never authorized, approved, or required this anticompetitive behavior by Pan American so as to exempt it from the Sherman Act.

The District Court's order divesting Pan American of its stock interest in Panagra does not interfere with or

encroach upon the exercise by the Civil Aeronautics Board of its proper authority. The District Court took no action with respect to the awarding or cancelling of routes; it merely directed a change in the ownership of fifty per cent of Panagra's stock.

V.

The affiliation between Grace and Panagra is not rendered inherently unlawful by Grace's ownership of the stock of Grace Line.

A. The services offered, respectively, by Grace Line and Panagra are not reasonably interchangeable so as to be competitive within the meaning of the Sherman Act. Grace Line is principally a cargo carrier whereas Panagra is predominantly a carrier of passengers. The passenger service offered by Panagra is both vastly quicker and substantially less expensive than that offered by Grace Line. On these routes, particularly in view of their length, the potential traveller does not regard the services as reasonable alternatives. The operative reason for a passenger's selecting Grace Line's service is the desire for a sea voyage. With respect to cargo, the services are not interchangeable because of, on the one hand, the radical difference in cost, and on the other hand, the great difference in speed of delivery. The Government's evidence demonstrates that there is no substantial likelihood of significant competition for cargo between air and sea carriers on this particular route.

The administrative rulings upon which the Government relies do not demonstrate the existence of competition on this route; they relate to other routes with different characteristics. The Civil Aeronautics Board has recognized

States . . . and foreign countries." The Postmaster General in his advertisement of bidding for such contracts described the particular route and thereby established the territory of the successful bidder.*

The Postmaster General described his policy in administering the foreign air mail acts in the late 1920's and the early 1930's as follows:

> *"I have stated frankly to the air mail operators that in the present state of the industry it did not seem the part of wisdom to invade each other's territory with competitive services and that I did not believe that money paid for postal service should be used to set up services to injure competitors.* In pursuance of this policy I suggested the abandonment by the Pan American Co. of the domestic field in the United States . . . Their field is the international service . . . Consistently with the policy outlined, it would seem improper for any of our domestic air mail operators to use mail pay to invade the peculiar field of Pan American Co." (Hearings Before a Special Committee of the Senate on Investigation of Air Mail and Ocean Contracts, 73rd Cong., 2nd Sess. 1934, page 2459 ("Black Hearings"), (emphasis supplied)).

The Postmaster General's justification for this policy was, first, that it was enough for the United States to support with mail subsidies one company operating at a loss on a particular route and, second, if more than one U. S. flag air line sought concessions from South American governments there might be diplomatic complications which could result in the South American governments granting exclusive concessions to non-United States flag carriers (*Id.* 2460, 2461, 2463, 2469, 2639 and 2640).

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* Panagra was granted a ten-year contract for Foreign Air Mail Route No. 9 between the Panama Canal Zone and Buenos Aires via the west coast of South America.

> Braniff International Airways (Braniff), the only other American flag carrier operating between the United States and South America aside from Pan American and Panagra" (R. 5366-67).

That Judge Murphy accurately stated the Government's objective is evident from the consent decree which the Antitrust Division and Pan American submitted to Judge Murphy in 1958 and which Judge Murphy refused to sign.* The decree provided for the divestiture by Pan American of its interest in Panagra by sale of its stock to Braniff, but made that divestiture contingent on the sale by Grace to Braniff, either voluntarily or as a result of court order, of enough of its interest to give Braniff control.

Consideration of the Government's objective demonstrates that it does not believe that Panagra is in an unduly dominant position on the western coast of South America or that there is an insufficiency of airline competition on that route; its apparent purpose is to eliminate Panagra and thereby secure more concentration, rather than less.

Moreover, as Grace pointed out in opposing the consent decree, the Government apparently sought not only to divest alleged antitrust violators of their stock interests but also to compel them to sell their stock to a particular competitor of the joint enterprise. It did not appear to Grace when the consent decree was presented, and it does not appear to it now, that it is a proper function of antitrust enforcement to supplement the Federal Aviation Act by seeking to compel a merger which the Civil Aeronautics Board has no authority to bring about and by seeking to deprive Grace of an interest in Panagra which is reserved and guaranteed

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* The proposed consent decree and Judge Murphy's order disapproving it are printed as Appendix A to this Brief.

to it by the "grandfather clause" of that Act.* *Cf, St. Joe Paper Co.* v. *Atlantic Coast Line Railroad*, 347 U. S. 298, 305 (1954).

Of course if Grace has violated the antitrust laws it cannot object to being held to account for its violation merely because the Government is seeking to serve some other policy. On the other hand, if an antitrust violation has not been committed, Grace is entitled to object to the use of an antitrust prosecution as a means of achieving objectives which some department of government may have thought desirable but which it is not authorized to secure. Grace submits that Judge Murphy fairly analyzed the record in this case and correctly concluded that no unlawful restraint of trade by Grace was shown.

Summary of Argument.

I.

This Court has jurisdiction to hear this appeal, *Brown Shoe Co.* v. *United States*, 370 U. S. 294 (1962).

II.

A. The issues of this case can only be understood against the background of economic conditions and governmental policies which existed when Panagra was formed. In the light of the economic situation in air transportation in the pioneering years before 1938, and in the light of the policies "enforced," as the Government's brief puts it (p. 13), by the United States Government through the Post Office and State Departments during that period, competition between United States flag carriers within South America was, in the words of the District Court, "economically

* See pp. 93-94, *infra*.

that, under certain circumstances and on particular routes, air and surface transportation may not be competitive.

B. Even if Grace Line and Panagra were competitive, Grace's ownership of an interest in Panagra would not unreasonably restrain trade. In participating in the formation of Panagra, Grace did not acquire an existing competitive facility; rather, it participated in the creation of a new facility—an extension of its interest in transportation into a new means of transportation. The creation of such a facility, unlike a merger, does not eliminate or lessen competition. In any event, even assuming that Grace Line and Panagra compete to some degree, the record demonstrates that they are not sufficiently competitive so that an affiliation between them could constitute an unreasonable restraint of trade. Moreover, there is vigorous competition from other sources, both with respect to air line service and steamship service, which would deprive the affiliation of any possible restraining effect.

Rather than supporting the Government's argument, the congressional and administrative policies upon which it relies support the view that air carrier-surface carrier affiliation ought not to be generally condemned. Such affiliations have repeatedly been held to be lawful, in the public interest, and to have no restraining effect. Even if there were a policy of the kind the Government describes, the existence of such a policy would not demonstrate the existence of a Sherman Act violation in this case.

Although the affiliation between Grace and Panagra has existed for more than thirty years, the Government has presented no evidence of any restraint imposed by Grace

upon Panagra. Rather, Grace's persistent efforts to develop Panagra's operations, demonstrated by the record, found by the District Court, and recognized by the Government, demonstrate that no restraint has occurred and that none will occur in the future.

ARGUMENT.

I.

The Court has jurisdiction to hear this appeal.

We agree with the Government that the decision in *Brown Shoe Co.* v. *United States*, 370 U. S. 294 (1962) is controlling and that the judgment of the District Court was a final judgment within the meaning of the Expediting Act, 15 U. S. C. § 29. We, therefore, agree that the Court has jurisdiction to hear this appeal.

II.

The participation of Grace in the formation of Panagra never was, and is not now, a combination in restraint of trade in violation of the Sherman Act.

Analysis of the Government's charges must begin with an understanding of the state of development of air transportation in the late 1920s, the problems faced in offering an air transportation service abroad, and the other environmental factors and governmental policies which conditioned the organization and development of such a venture up until 1938. Only when these factors are understood can the Government's attack on the organization of Panagra be evaluated.

impossible." Indeed, the Government concedes that this was so.

B. Grace's participation in the organization of Panagra did not unreasonably restrain trade.

Grace had no unlawful intent or purpose in participating in the formation of Panagra. The Government's contention that the District Court found such an intent is based upon an obvious misreading of the opinion below. The District Court found that Grace participated in the formation of Panagra without unlawful intent, and with the sole purpose of creating a successful pioneering venture in air transportation. These findings are not clearly erroneous but find ample support in the record.

Since competition between U. S. flag carriers was economically impossible, the formation of Panagra did not prevent competition between Pan American and Grace and did not restrain trade. Rather, since the complementary resources of Pan American and Grace made possible the development of a venture which it was in the interests of the United States to promote, the formation of Panagra was economically justified and strongly advanced the public interest.

Nor was any allocation of territories between Panagra and Pan American implicit in Panagra's formation. As this Court held in *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593 (1951), competition between affiliated companies is not only possible and consistent with the affiliation, but, indeed, such competition may be required by the Sherman Act.

III.

A. Shortly after the formation of Panagra an understanding developed between Grace and Pan American whereby Panagra was to operate down the west coast of

South America and Pan American was to operate along the east coast of South America. This arrangement was based upon the economic situation existing prior to 1938 and the policies of the Post Office and State Departments during that period, under which competition between United States flag air lines in South America was not possible. It reflected and was defined by the contract routes granted to Panagra and Pan American by the Post Office Department during that period. There was never any understanding between Pan American and Grace limiting possible future operations of Panagra north from the Canal Zone. The east-west zoning arrangement ceased to exist in 1938 when the expiration of Panagra's ten-year mail contract and the enactment of the Civil Aeronautics Act fundamentally altered the situation and made competition possible. Grace never relied upon or recognized any zoning arrangement after that time. On the contrary, as the Government concedes, Grace made persistent efforts subsequent to 1938 to extend Panagra's routes both north from the Canal Zone and within South America. The extensions sought by Grace were blocked by Pan American's negative control.

B. Judge Murphy correctly concluded that the east-west zoning arrangement was lawful during the period when it existed. The arrangement did not restrain or prevent competition since competition was at that time "economically impossible." Even if a restraint had been shown, the Government has not proved its case because it has failed to demonstrate that the east-west zoning arrangement unreasonably restrained the foreign or domestic commerce of the United States. In any event, since the agreement went out of existence in 1938, and since Grace, from 1938, has persistently taken action completely inconsistent with any such agreement, no relief against Grace is warranted.

> in which each would have 50 per cent stock ownership, together with their division of markets and other incidental arrangements, was, in its inception and operation, a violation of the Sherman Act requiring a decree ordering both Pan American and Grace to divest themselves of the stock" (p. 2).

The Court may regard the Government's tardy effort to challenge the original combination of Pan American and Grace in Panagra on the variety of grounds set out in its brief, in addition to challenging the allegedly unlawful allocation of territories and the affiliation of Grace Line's steamship interests with Panagra's air service, as a changing of "the substance of the questions already presented" in the Notice of Appeal in violation of Rules 10 and 15 of the Rules of this Court.*

If, however, the Government's attack upon the original combination of Pan American and Grace in Panagra is entertained, it must be rejected.

In this portion of our brief we will demonstrate that in participating in the formation of Panagra Grace had no intention or purpose of suppressing or restraining competition, but rather intended to participate actively and vigorously in the development of a pioneer venture in aviation. We will also demonstrate that no allocation of territories or other restraint of trade was implicit in the formation of Panagra and that the formation of Panagra did not unreasonably restrain trade by preventing Pan American

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* Rule 10-2 of the Rules of this Court restricts the Government to "the questions set forth in the notice of appeal or fairly comprised therein . . ." Rule 15-1(c)(1) provides that "Only the questions set forth in the Jurisdictional Statement or fairly comprised therein will be considered by the court." Rule 15-1(c)(2) further provides that the Jurisdictional Statement ". . . may not raise additional questions or change the substance of the questions already presented."

and Grace from competing in air transportation along the western coast of South America.

1. Grace had no unlawful intent or purpose in participating in the formation of Panagra.

The Government's argument that the purpose underlying the formation of Panagra was to protect Pan American and Grace from competition is based entirely on an obvious misreading of Judge Murphy's opinion in the District Court. At pages 31 and 32 of its brief the Government quotes extensively from statements by Judge Murphy to the effect that Grace and Pan American appreciated the dangers of competition between themselves, that Grace was aware of the competitive potential of air transportation, and that the parties appreciated the protection a combination of their interests on the west coast would afford against the competition of an independent carrier. The Government seeks to construe these statements by the District Court as findings of fact. Indeed, while the Government states that the "undisputed evidence" shows that "the purpose underlying the formation of Panagra was to protect Pan American and Grace from competition" (p. 31), it refers to no such evidence, but only to the supposed findings of the District Court.

A reading of Judge Murphy's opinion unmistakably reveals that the remarks relied upon and quoted by the Government do not constitute findings or conclusions and do not even represent the views of the Judge. Judge Murphy prefaces the part of his opinion from which the Government quotes with the statement that the principal dispute between the parties "relates to the inferences which we are asked to draw from the evidence" (R. 5388). Judge Murphy then says "The argument for the inference of con-

Judge Murphy's findings were amply supported by the evidence; indeed, there is no evidence to support the Government's contrary contentions.

The Government, in its brief, points out that Grace "'regarded aviation as simply a new development in transportation'" (Brief, p. 34), apparently attaching some stigma to this attitude In point of fact, Grace's interest in this "new development" was a proper business instinct which it proceeded to pursue with vigor and imagination. As Mr. Patchin, a Grace manager at that time, stated in 1928 in the document from which the Government quotes:

> "... we regarded aviation as simply a new development in transportation and as we had always been interested in transportation to the West Coast of South America we were following the matter closely ..." (G-5, R. 340).

In his testimony before the Civil Aeronautics Board in Docket 779* Mr. Patchin described Grace's attitude as follows:

> "... I felt that the flight of Colonel Lindbergh across the Atlantic established aviation as transportation. ... W. R. Grace & Company had always been interested in transportation. I felt it would be an excellent line of activity for the Company, a splendid thing for the development of the South American countries with which we were doing business and in which we were doing business" (G-170, R. 5304).

The documentary record is replete with evidence dating back to the early years of Panagra which reflects Grace's active interest in the vigorous development of Panagra's

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* The Panagra Terminal Investigation, instituted on September 10, 1942.

operations. As Mr. Roig wrote to Mr. Patchin on October 4, 1930:

> ". . . I am more than ever convinced that this business, if our partners will let us run it in a business-like way, will be a very important success . . ." (WRG-32, R. 4682).

In a similar vein the Grace agency in Lima wrote on November 7, 1928 to the various sub-agencies in Peru:

> "This service, we hope will be the nucleus of a through service between the United States and Chile and there is consequently the possibility that the service will be augmented in the future. The success of the primary operation will naturally depend on keeping expenses to a minimum and obtaining as much business as possible" (WRG-12, R. 4642).

Grace instructed its personnel in South America to make every effort to promote the development of the new enterprise. For example, Mr. Cogswell of Grace, in a letter dated September 4, 1928, said:

> "We trust that our houses in Peru will use every effort to stimulate interest in this business and be of all assistance possible" (G-16, R. 358).

Pan American's motive in participating in the joint venture in these early days was apparently the same, *i.e.*,

> ". . . because [Pan American] could contribute to it a knowledge of the air business, whereas [Grace] could contribute a knowledge of South American business, and that working together we should be able to develop a successful enterprise" (G-54, R. 486; see also G-30, R. 412; G-13, R. 349-50).

At least, as the document quoted indicates, this was Grace's understanding of Pan American's motive.

The record demonstrates that Grace was interested in aviation along the west coast of South America as a new development in transportation in an area in which it had long been interested, both as owner of Grace Line and by virtue of its extensive trading and agency operations in that area. The record also demonstrates that Grace embarked upon this new enterprise with the idea of actively and aggressively promoting it rather than with any idea of strangling or suppressing it to enhance Grace Line's steamship operations.

It will be demonstrated in later sections of this brief that Grace's active efforts for the promotion and development of Panagra have continued through the years and up until the present time. For the moment, however, it is sufficient to note that, in participating in the organization of Panagra, Grace's sole interest was to initiate an enterprise which would actively and effectively develop this new means of transportation.

2. The formation of Panagra did not eliminate competition between Pan American and Grace.

The Government next argues that Pan American and Grace were potential competitors and that their joint formation of Panagra prevented competition between them.

When the Government asserts that Pan American and Grace were potential competitors it bases this assertion only on a suggestion that there was "a substantial likelihood" that both Pan American and Grace would enter into the air transportation business in western South America.

In point of fact, there is no basis for such a conclusion. The evidence upon which the Government relies

shows only that Grace kept itself informed of the activities of certain companies which were becoming active in west coast air transportation and that Grace had given some study to possible west coast routes (Brief, p. 34). This does not, however, demonstrate that there was a "likelihood" that Grace would have, in fact, organized a company to engage in air transportation on this route if it had not been able to work out a cooperative enterprise with Pan American. Grace had no previous experience in air transportation and it might well have concluded that the obstacles and difficulties of such a venture made the risks too great. In any event, it is sheer speculation to resolve the question one way or the other.

On the Pan American side, it is clear that it had no intention of embarking on this venture by itself and felt that, without Grace's participation, it would not be able to do so. In a memorandum dated May 23, 1928, Patchin, of Grace, quoted Hoyt, speaking for Pan American, as saying that "if we [Grace] were disposed to go ahead on our own, he would be inclined to stand aside and not compete as he felt we would be in better position than anyone else to undertake it" (G-5, R. 340). Moreover, in submitting Panagra's bid for the air mail contract on the west coast of South America Juan Trippe of Pan American stated that "without the cooperation of the Grace organization . . . no American Air Transport Company could economically survive in this terri y" (G-30, R. 415).

Apart from these evidences of the specific intent of the parties, however, the above description of the conditions and governmental policies affecting air transportation on this route prior to 1938 (pp. 14-21, *supra*) demonstrates the impossibility of competition between Pan American and Grace.

It is quite clear that the Postmaster General might have awarded an air mail contract for the west coast route to Pan American or to Grace, but never to both. As has been demonstrated above, the party who failed to secure the contract would not have been able to survive. The possibility of competition between Pan American and Grace, which the Government postulates, did not exist. Indeed, the Government concedes that this is true when it says in its brief:

> ". . . it may be that only one of the two parent companies would have been able to obtain a government subsidy, and hence that only one would have actually begun to operate a west coast air line in 1928 . . . " (Brief, pp. 37-38).

The Government seeks to prevent the collapse of its argument by suggesting that, even if there was no possibility of competition between Pan American and Grace, the formation of Panagra deprived the Government of competitive bidding on the air mail contract. If the only anti-competitive effect of the formation of Panagra to which the Government can point is a reduction of the number of bidders for an air mail contract which was awarded in 1929 and expired in 1938 with the enactment of the Civil Aeronautics Act, its position is weak indeed.

This is not a case where prospective bidders have gotten together secretly to submit a joint bid. One of the principal reasons why the air mail contract was awarded to Panagra was because the Postmaster General took account of the respective contributions which Pan American and Grace could make to the new enterprise. Thus, in awarding the contract the Postmaster General said:

> "This is the most important air mail contract that has yet been awarded. Its importance goes not alone to the financial ability of the bidders but more

> directly and to a far greater degree to their proven and recognized capacity for performing the service contemplated.
>
> "The Pan American Company has filed evidence of extensive preparation for the operation of an air mail route through the countries with which arrangements are necessary. . . . . In addition to this it will have the benefit of all the facilities of the Grace Line of steamers now operating a firmly established service by sea along the whole line of the proposed air mail route" (WRG-1, R. 4619).

Indeed, as the Postmaster General observed, the contract was not awarded to the lowest bidder, but rather to Panagra, because of the resources which Grace and Pan American would be able to devote to the new enterprise (WRG-1, R. 4618-20). The award to Panagra was subsequently upheld by the Attorney General's office over the protest of an unsuccessful bidder, and after the Attorney General had examined "the facts disclosed in the very large record" submitted by the Postmaster General, 36 Op. Atty. Gen. 33 (1929).

The Government's final effort to resuscitate its argument is contained in the suggestion that:

> ". . . the joint venture foreclosed the possibility of competition from the losing bidder at some future time when a subsidy would be less important" (Brief, p. 38).

At this point the Government's argument becomes speculative to the point of absurdity. What the Government is apparently suggesting is that two parties may not join their complementary resources to enter a business in which the United States Government will allow only one company to engage because to do so would prevent pos-

foreign mail contracts, *was economically impossible* . . ." (R. 5394; emphasis supplied).

As the material cited above indicates, Judge Murphy's finding was firmly grounded in the record. In 1935, for example, the Federal Aviation Commission reported that:

> "To maintain a safe and efficient air transportation system under existing conditions *demands direct governmental aid.*" (Sen. Doc. 15, 74th Cong., 1st Sess. 1935, p. 47; emphasis supplied.)

Panagra's own history demonstrates that governmental aid was essential to survival. During every year between 1930 and 1938 its operating loss before taking mail pay into account was in excess of $1,000,000, and in 1938 it was $1,305,000 (Exh. PS-6, R. 173, 4528). It is significant that out of 145 air lines which tried to operate without air mail contracts from 1925 to 1940 only one was still operating in 1941. Puffer, *Air Transportation* (Blakiston, 1941) pp. 53-54.

Since it was not possible during this period to operate without government subsidy, and since the policy of the United States Government was to provide such subsidy only to a single carrier in a particular zone, it was obviously not possible for more than one United States flag carrier to operate in any such zone.

Moreover, if a United States flag line sought to operate in competition with the subsidized carrier on a particular route, it would face, not only all of the difficulties of establishing an air line under the adversities which existed during this period, but, in addition, it would be faced with competition from another United States flag line which had enormous advantages not available to it, *i.e.*, governmental subsidy and diplomatic assistance from the State

Department. It is apparent that, once the Postmaster General had awarded an air mail contract on a particular route, no other United States flag line could hope to survive in competition with that carrier.

B. The organization of Panagra did not unreasonably restrain trade; it was an economically sound arrangement which advanced the policies and interests of the United States.

The Government's contentions on this appeal have undergone a considerable metamorphosis since the filing of the Notice of Appeal and, indeed, even since the filing of the Jurisdictional Statement.

In its Notice of Appeal the Government specified as the questions which it was raising, first, the question whether Grace and Panagra illegally combined and conspired with Pan American to allocate territories in air transportation, second, whether Grace monopolized or attempted to monopolize air transportation in Latin America, and, third, whether the affiliation between Grace Line's steamship service and Panagra's air service unreasonably restrained trade (R. 5448).

In its Jurisdictional Statement (p. 2) the Government indicated that it was "not pressing the issue" stated as the second question above and stated the other two questions in substantially the same way in which they were set out in the Notice of Appeal.

In its brief, however, the Government characterizes a restated version of these remaining issues as "subordinate questions" (pp. 2-3). The Government now regards the "ultimate question on the merits" as:

> "... Whether the combination of Pan American and Grace to form an airline (Panagra) operating on, and confined to, the west coast of South America,

spiracy is appealing to a mind bent on finding conspiracy." (*Ibid.*) In the next four paragraphs of his opinion, the paragraphs upon which the Government relies, Judge Murphy proceeds to set out the conclusions which the "mind bent on finding conspiracy" might accept. After doing so, however, Judge Murphy states his own contrary conclusion as follows:

> "We have carefully considered all of the evidence relating to the conspiracy charge and, in our opinion, no such conspiracy existed between Grace and Pan American" (R. 5390).*

After discussing the sound economic reasons which justified the joinder of Pan American and Grace in forming Panagra, Judge Murphy says:

> ". . . we feel constrained to accept those consistent with innocence from among the equivocal inferences permissible from the evidence presented" (R. 5391).

Against the remarks erroneously cited and relied upon by the Government should be set the following statement by Judge Murphy, which does indeed represent his findings and conclusions with respect to Grace's participation in the formation of Panagra:

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* The Government argues (Brief, p. 30, note 13) that the statement quoted above is not a finding of fact but is merely a legal conclusion based upon the "logically prior legal determination" that the "combination" between Pan American and Grace did not violate the Act. A reading of the relevant portions of Judge Murphy's opinion demonstrates the error in the Government's contention. It is plain from the portions of the opinion quoted above that Judge Murphy's determination that there was no conspiracy and no unlawful intent on Grace's part was not a "legal conclusion" based on some "logically prior" determination, but was rather a finding arrived at after Judge Murphy had "carefully considered all of the evidence" and based on "inferences" from that evidence and the fact that the "evidence" did not "make out" an unlawful intent.

> *"We cannot, from the evidence adduced, make out an unlawful intent to restrain aviation competition in the Grace participation in the formation of Panagra,* and the history of Grace's activity in the affairs of Panagra preponderatingly demonstrates that it fostered and fought for Panagra development and expansion. To be sure, Grace sought continuously to control the management of Panagra, and its efforts were crowned with success in 1939. Its desire to control the management can as readily be explained as an aggressive business instinct, intensified in the light of the conflicting, containing attitude of Pan American, as well as from the standpoint of its asserted attempt to monopolize all transportation on the west coast. We are buttressed in our choice of the former in that the record before us fails to disclose any antitrust violations on the part of Grace vis-a-vis Panagra, unless it be *per se* violative of the Sherman Act for Grace to own the stock that it does in that company" (R. 5392-93; emphasis supplied).

The Government's argument, rather than being based upon findings made by the District Court, flies directly in the face of those findings. Judge Murphy, after a careful review of a massive record, concluded that Grace did not participate in the formation of Panagra to protect itself from competition, but rather that it entered upon this enterprise because it "recognized the potential of air transportation in the commercial development of the South American countries" (R. 5392), because it "had a great deal to offer to enhance that development" (R. 5392), and because its joinder with Pan American represented "an economically sound arrangement for the establishment and successful development of American commercial aviation on the western coast of South America" (R. 5391).

sible competition at some future time, if governmental policy changes, and if, at that time, the other party is able to compete with the party who has already become established with the Government's assistance. To state the argument is to reveal its deficiencies.

A word should also be said about the Government's characterization of Grace and Pan American as "powerful firms" and "potentially strong competitors" (Brief, pp. 35, 37). It is easy to make these characterizations now, but it was not so easy in 1928. At that time Grace was completely without experience of any kind in aviation; Panagra was *its first and only* venture in this field. To identify it as a "potentially strong competitor" is to say what it might be now, not what it was in 1928. Pan American, on the other hand, was a far cry from today's colossus. In October 1927 it began operations under its first mail contract (R. 5372-73), and in 1928 it owned three airplanes (R. 5374, note 5).

Apart from the particular facts surrounding the formation of Panagra which justify the organization of the enterprise and demonstrate that it did not restrain trade, the basic proposition upon which the Government's contention is based will not stand analysis. Apparently the Government argues that, whenever there is a "substantial likelihood" that two companies might enter upon a particular venture individually, those companies are barred by the antitrust laws from undertaking the venture together. Nostrums about "preventing the birth of a commerce which does not exist" (Brief, p. 21) are not helpful in assessing the practical consequences of such

a rule. It is difficult to imagine a principle which would be more stultifying of American enterprise abroad.

Virtually every joint venture which is undertaken is begun by parties who were, prior to the formation of the joint venture, interested to some degree in the enterprise which the venture was formed to undertake. Moreover, most joint ventures are formed in situations where each of two or more parties has something to contribute to the venture, as was the case with Panagra. On the Government's theory, the very fact that each of the parties had something to contribute would be evidence of the likelihood of that party's undertaking the venture alone. If the Government's principle were adopted, it is difficult to imagine any economically sound joint venture which would escape condemnation. And, indeed, the sounder and more logical the venture, the greater the risk of condemnation would be.

3. No allocation of territories was implicit in the formation of Panagra.

In seeking to establish some restraining effect of the formation of Panagra the Government next states that an "inescapable implication of the joint venture was a mutual agreement between Pan American and Grace dividing territory so that neither parent company would offer competing air transportation in the territory served by Panagra, and Panagra would not compete in the territory to be served by Pan American" (Brief, p. 34).

This is another of the Government's arguments which flies directly in the face of the explicit findings of the District Court. Judge Murphy pointed out in his opinion below:

> "Grace . . . contends that their territorial agreement was entered into *after* Panagra's formation . . ." (R. 5396) (emphasis by the Court).

of Panagra would be contrary to the findings of the District Court and the evidence in the case, and would ignore this Court's rulings in the *Timken* case.

4. The formation of Panagra was economically justified.

In holding that there was no illegality in the joinder of Grace and Pan American to form Panagra Judge Murphy found as follows:

> "The joinder of Grace and Pan American of their complementary facilities was a natural and mutually advantageous combination, and an economically sound arrangement for the establishment and successful development of American commercial aviation on the west coast of South America. Grace had the established branches and agencies on the west coast and all the facilities used in connection with the operations of the steamship line that could be used to such advantage in connection with the new airline operation. Grace also had widespread commercial contacts, a respected trade name and considerable influence in the countries along the proposed route. Pan American was further advanced than any other American company in the carriage of foreign air mail, and had the technical aviation skill which Grace lacked at that time. The union of their physical and technical resources assured the maximum possibilities of success in instituting and carrying on a pioneering venture, useful to the community, which did not theretofore exist" (R. 5391-92).

It is submitted that these findings by Judge Murphy accurately sum up the considerations which led to the formation of Panagra. Judge Murphy's findings, and the evidence which supports them, make it plain that the formation of Panagra was not a device to restrain competition but was rather an economically justified business relation-

ship, dictated by the complementary experience and facilities of the two participants in the enterprise, and essential to the development of United States flag air transportation on the west coast of South America in those early days.

It ill behooves the Government at this late date to argue that when Grace embarked upon its venture with Pan American it violated the Sherman Act. The Government concedes that Grace had an important contribution to make to the enterprise (Brief, pp. 36-37). The Government concedes that the union of Grace and Pan American in Panagra resulted in a company which was best able to meet the challenge of foreign competition and develop a venture important to the interests of the United States (Brief, p. 38). The Government concedes that the United States "enforced" a policy which permitted only a single United States flag air line to operate on the western coast of South America (Brief, pp. 13, 37-38, 67). The Government cannot help but concede that Pan American and Grace joined in this venture with the aid, assistance and encouragement of various branches of the United States Government. The Government cannot help but recognize that the formation of Panagra and its operations promoted the national interest by enabling an American carrier to participate effectively in the development of this route.

Now, after the venture has been operating for more than 30 years and after it has succeeded in building a strong United States flag air line, Grace is told that its participation in the enterprise was unlawful from the very beginning. The illegality which the Government charges does not flow from any activities by which Grace, over the course of the intervening 30 years, has restrained competition or otherwise injured the interests of the United States. Rather, the claimed illegality lies in Grace's decision in 1928 to join in the venture in the first place. The Government says that,

It has specifically been held, for example, that a practice which might otherwise be condemned is not unlawful where, as here, it is incident to the creation of a new industry. *United States* v. *Jerrold Electronics Corp.*, 187 F. Supp. 545, 556-57 (E. D. Pa. 1960), *aff'd*, 365 U. S. 567 (1961); *United States* v. *E. I. DuPont de Nemours & Co.*, 118 F. Supp. 41, 219-20 (D. Del. 1953), *aff'd*, 351 U. S. 377 (1956); *General Talking Pictures Corp.* v. *American Telephone & Telegraph Co.*, 18 F. Supp. 650 (D. Del. 1937). Practices which superficially appeared to fall within a category of *per se* illegality have, on a variety of other grounds, been held to be lawful in the particular context in which they occurred. *E.g.*, *United States* v. *Morgan*, 118 F. Supp. 621 (S. D. N. Y. 1953); *United States* v. *National Football League*, 116 F. Supp. 319 (E. D. Pa. 1953); *Union Circulation Co.* v. *Federal Trade Commission*, 241 F. 2d 652, 656-57 (2d Cir. 1957); *United States* v. *Insurance Board of Cleveland*, 188 F. Supp. 949, 954-55 (N. D. Ohio 1960). Indeed, this Court has itself held that price fixing, ordinarily condemned out of hand, may be lawful in a particular context. *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238 (1918).

Special caution in applying a *per se* rule is warranted in a situation where foreign commerce, or operations outside of the United States are involved. *Report of the Attorney General's National Committee to Study the Anti-trust Laws* (1955) p. 83; Fugate, *Foreign Commerce and the Anti-trust Laws* (1957) pp. 344-46; Oppenheim, *Federal Anti-trust Legislation: Guideposts to a Revised National Anti-trust Policy*, 50 MICH. L. REV. 1139, 1176-77 (1952).

It is submitted that the arrangement which Judge Murphy found here had no anti-competitive effect and was not unlawful.

The agreements which this Court has struck down as unlawful divisions of territory have been agreements which prevented competition which, but for the agreements, would have existed. Here the lack of competition did not result from the agreement of the parties; rather, it resulted from the economic conditions and governmental policies within the framework of which the parties operated.

As Judge Murphy found, it was during the period prior to 1938 "economically impossible" for two U. S. flag airlines to parallel each other's routes (pp. 14-21, *supra*). Indeed, the Government concedes that the Post Office Department "*enforced* a 'no-parallel' policy" (Brief, p. 13; emphasis supplied) during this period and concedes further that it was a consequence of this policy that "only one [U. S. flag airline] would have actually begun to operate a west coast airline" during the period when the policy was enforced (Brief, pp. 37-38). Against these facts it is plain that it was not any zoning agreement which prevented competition. Competition was not possible, in any event, and the arrangement merely drew in the details of the demarcation line between the operations of Panagra and Pan American.

It has been universally recognized both by the courts and the commentators that no unlawful restraint of competition can exist where, by virtue of governmental policy or economic factors, the competition allegedly restrained is impossible and cannot exist. This Court recognized the validity of such a principle in *Parker* v. *Brown*, 317 U. S. 341 (1943) where it held that a program controlling the production of raisins did not violate the Sherman Act because the restraint was "imposed" by the State of California as "an act of Government" which the Sherman Act was not intended to prohibit. Similarly, if the Post Office and State Departments adopt and enforce policies which,

These arrangements had no obvious impact on the foreign commerce of the United States and the Government has demonstrated none.

In *Alfred Bell & Co. Ltd.* v. *Catalda Fine Arts Co.*, 191 F. 2d 99 (2d Cir. 1951) the court ruled that an antitrust violation was not made out where the restriction "was meant to have, and did have, at most, only an incidental, peripheral, reference to sales in the United States of America" (191 F. 2d at 105-06). In the same vein, the Report of the Attorney General's National Committee to Study the Antitrust Laws took the view that:

> "We feel that the Sherman Act applies only to those arrangements between Americans alone, or in concert with foreign firms, which have such substantial anti-competitive effects on this country's 'trade or commerce . . . with foreign nations' as to constitute unreasonable restraints" (p. 76).

See also *United States* v. *National Lead Co.*, 63 F. Supp. 513, 524-25 (S. D. N. Y. 1945), *aff'd*, 332 U. S. 319 (1947); *United States* v. *Aluminum Company of America*, 148 F. 2d 416 (2d Cir. 1945).

The Government has failed to show that Grace participated in an arrangement which unreasonably restrained competition anywhere. More particularly, the Government has failed to show any possible impingement on the foreign or domestic commerce of the United States. Judge Murphy correctly held that no unlawful agreement was shown.

D. No relief against Grace is warranted.

Even if the Government had demonstrated that the zoning arrangement which existed prior to 1938 was an illegal agreement to divide territories, it would by no means follow that present relief, either injunctive or otherwise, is warranted against Grace.

As this Court observed in *United States* v. *Oregon Medical Society*, 343 U. S. 326 (1952):

> "It will simplify consideration of such cases as this to keep in sight the target at which relief is aimed. The sole function of an action for injunction is to forestall future violations. . . .
>
> ". . . We agree with the trial court that conduct discontinued in 1941 does not warrant the issuance of an injunction in 1949" (343 U. S. at 333-34).

If this is so, then certainly the existence of an agreement which expired in 1938 and has not been relied upon or enforced by Grace since that time does not warrant present relief.

Moreover, the complete superfluity of relief against Grace is evidenced by Grace's conduct over the last 30 years. Both the District Court and the Government have recognized Grace's vigorous action to develop Panagra's routes and resist Pan American's suppression during that entire period. As Judge Murphy found:

> "If anything has been established it is that Grace has been the only one of Panagra's two partners that has persistently and continuously attempted to improve its service and extend its routes to the United States" (R. 5429).

There is no reason whatever to anticipate that, once Panagra is released from Pan American's restraining hand, Grace will in any way impede Panagra's logical development or prevent it from competing with Pan American for its rightful position in the Latin American transportation market. Indeed, it is evident that no proponent of Panagra's development more active or vigorous than Grace can be found.

Judge Murphy went on to say:

> "We find that the agreement between the defendants as to spheres of operations and its evolution was substantially in the manner described by Grace" (R. 5398).

The terms and legal consequences of the understanding between Pan American and Grace which was given effect during the first decade of Panagra's existence will be considered hereafter. It is clear, however, that Judge Murphy found no agreement as to spheres of operation and no territorial arrangement implicit in the formation of Panagra. The discussion of the evidence with respect to the arrangement which was arrived at, *infra* at pages 38-58, will make it plain that Judge Murphy's finding was well grounded.

The Government's effort to find an allocation of territories "implicit" in Panagra's formation is belied by the subsequent history of Panagra. Grace certainly never recognized that it was implicit in Panagra's formation that Panagra would not compete with Pan American. In the Government's own words, the period since the late 1930's has been characterized by "Grace's efforts to extend Panagra's operations north of the Canal Zone to the United States, a route which would have brought Panagra into competition with Pan American" (Brief, p. 11).

Apparently what the Government is saying is that, whenever one company has an interest, or at least an interest which gives it negative control, in another company, it is implicit in that arrangement that the parent will not compete with the subsidiary and that the subsidiary will not compete with the parent. Such a principle would make nonsense of this Court's rulings in *Timken Roller Bearing Co. v. United States*, 341 U. S. 593 (1951).

In that case Timken owned 30.25% of British Timken; Dewar owned 25% of British Timken and the remainder of British Timken was publicly owned. Timken also owned 50% of French Timken and Dewar owned 50% of that company (341 U. S. at 595, 601, note 10). This Court did not, however, find that there was any division of territories or agreement not to compete inherent in these affiliations. Rather, the Court found that there were formal agreements among the parties allocating trade territories and that, under the circumstances of that case, these formal agreements were unlawful. Thus, the Court said to the defendants that, not only were the cross-affiliations consistent with competition among the companies, but, indeed, that the companies were required by the anti-trust laws to compete, despite the affiliations.

Even those members of the Court who favored divestiture in the *Timken* case did not do so on the ground that there was any unlawful territorial allocation implicit in the corporate affiliations, but rather on the ground that the interests were obtained as part of a plan to promote illegal trade restraints and, if continued, would provide "the temptation and means to engage in the prohibited conduct" (341 U. S. at 600). This is quite the opposite of suggesting that a prohibited restraint was implicit in the affiliation itself. As Mr. Justice Reed pointed out in his concurring opinion:

> "As there were no findings of fact tending to show violation of the Sherman Act otherwise than through formal agreements of partition of territory, we assume that appellant's conduct was otherwise lawful" (341 U. S. at 604).

Acceptance of the Government's argument that an unlawful division of territory was implicit in the formation

despite governmental encouragement and assistance which enabled Grace to join in that venture, and despite the important service which Grace rendered to the interests of the United States by so participating, Grace ought to have recognized that its participation would violate the Sherman Act and should have stood aside. If the Government had told Grace in 1928 what it tells it now, a United States flag air line might never have become established on the western coast of South America at all.

III.

The temporary and *ad hoc* zoning arrangement which existed prior to 1938 was not unlawful.

Having considered the Government's arguments directed to the inherent illegality of the formation of Panagra and the division of territories alleged to be implicit in its organization, we now turn to the explicit zoning arrangement which formed the basis of the Government's position in the District Court and which raises the first issue stated by the Government in its Notice of Appeal.

The zoning arrangement of which the Government complains can hardly justify the bringing of this suit. As the following discussion will make clear, the only zoning agreement which ever existed expired in 1938, and Grace's actions since that time have been completely inconsistent with the course of conduct which such an agreement would call for. Grace has since 1938 pressed for an expansion of Panagra's activities in competition with Pan American, rather than agreeing to avoid competition. Even during the now distant period when the agreement was operative it affected only activities within South America, unrelated to the foreign commerce of the United States, and, even in that geographical area and at that time, it restrained

no competition because competition was economically impossible.

We will consider first the terms of the agreement and its evolution, as found by the District Court. We will then consider whether the agreement which existed was illegal either *per se* or as an unreasonable restraint of trade and whether any relief against Grace is warranted. Finally, we shall consider certain arguments advanced by Pan American to the effect that the findings of the District Court as to the terms, scope, and duration of the agreement were erroneous.

A. The east-west zoning arrangement.

As Judge Murphy observed in his opinion, there has been a sharp difference between Grace and Pan American with respect to the proper scope of Panagra's operations. At the trial both Pan American and the Government contended that Pan American and Grace had agreed, prior to the formation of Panagra, that Panagra was to be restricted in perpetuity to the west coast of South America.

Grace, on the other hand, contended that the only zoning arrangement ever agreed upon was an *ad hoc* arrangement which developed after Panagra's formation. Grace contended that the agreement was only to the effect that Panagra was to operate in the countries of the west coast through which its mail line ran and that Pan American would operate only on the east coast. Grace contended further that there was never any agreement one way or the other with respect to possible extension of Panagra's line to the United States. Judge Murphy summed up this portion of Grace's contention as follows:

> "... there was no intention one way or the other contemplated *mutually* by them [Grace and Pan American] with respect to possible extension of Panagra's line to the United States" (R. 5396; emphasis by the Court).

Grace also contended that this zoning arrangement arose out of the "no-parallel" policy of the Postmaster General and the air mail contracts awarded pursuant to that policy. Thus, the agreement was related to the 10-year mail contract which was awarded to Panagra and which expired in 1938, and the agreement terminated in 1938 on expiration of that air mail contract, together with the change in policy represented by the enactment of the Civil Aeronautics Act. As Grace said in its trial memorandum (p. 50):

> "It [the east-west zoning arrangement] was described in terms of the routes awarded Panagra and Pan American by the United States. It was further, at least in Grace's eyes, an understanding ancillary both in term and purpose to the development of Panagra, the 'mutual interest', under its ten-year mail contract."

After analyzing the contentions of both parties Judge Murphy found as follows:

> "We find that the agreement between the defendants as to spheres of operations and its evolution was substantially in the manner described by Grace. We accept the version of Pan American, not as respects agreement between it and Grace, but as representing its own intentions for the destiny of Panagra" (R. 5398).

That Judge Murphy regarded the east-west zoning arrangement as not having endured past 1938 is evident from his finding that the arrangement was "consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938" (R. 5398), and from his statement that the agreement was "perfectly consistent" with this country's air transportation policy in "those formative years" (R. 5395).

Although the Government argued at trial in support of Pan American's view of the alleged agreement with Grace, the Government is apparently now abandoning that position. We do not understand that the Government now challenges Judge Murphy's findings with respect to the terms of the zoning arrangement which arose by agreement of the parties. The Government's present reliance on an alleged "implicit" agreement makes this clear (Brief, pp. 34-35).

For present purposes, the significant features of the understanding which the District Court found are, first, that it related only to routes within South America and that there was no mutual understanding with respect to routes between the Canal Zone and the United States and, second, that the agreement was related to operations under Panagra's 10-year air mail contract and ceased to have application subsequent to 1938.

B. The east-west zoning arrangement was not per se unlawful.

The Government's argument directed to the east-west zoning arrangement is essentially one of *per se* illegality. It seeks to make that argument by epithetical description rather than by analysis of the terms, circumstances, and consequences of the zoning arrangement. Thus the Government cites and relies principally upon the dictum in *Northern Pacific Railway Co.* v. *United States*, 356 U. S. 1, 5 (1958), that a division of territories is *per se* unlawful, and other cases condemning price fixing, group boycotts and similar practices.

Neither the *Northern Pacific* case, however, nor any of the other authorities upon which the Government relies, demonstrates that a rule of *per se* illegality can be applied automatically and without any reference to the context in which an allegedly unlawful practice occurs.

as "acts of Government," make competition impossible, the restraint does not violate the Sherman Act.

In *United States* v. *Minnesota Mining & Mfg. Co.*, 92 F. Supp. 947 (D. Mass. 1950), Judge Wyzanski observed that:

> "It is axiomatic that if over a sufficiently long period American enterprises, as a result of political or economic barriers, cannot export directly or indirectly from the United States to a particular foreign country at a profit, then any private action taken to secure or interfere solely with business in that area, whatever else it may do, does not restrain foreign commerce in that area in violation of the Sherman Act. For, the very hypothesis is that there is not and could not be any American foreign commerce in that area which could be restrained or monopolized" (92 F. Supp. at 958).

See also *Report of the Attorney General's National Committee to Study the Antitrust Laws* (1955), p. 83.

It is submitted that Judge Murphy was well justified in concluding that:

> "Consideration of the defendants' agreement or understanding with respect to the respective spheres of operations for the two airlines, when viewed in the light of the conditions under which they undertook, as foreigners, to establish an American system of international aviation in South America, the policy of this government and its stake in fostering their efforts, and the dedication of public monies involved, as well as the relation of the parties one to the other and the nature of the industry itself, compels the conclusion on our part that it involved no violation of the antitrust laws" (R. 5393-94).

The Government finds it difficult to disagree. In its Jurisdictional Statement it said that ". . . it would seem that such an agreement ceased to be valid no later

than 1938, when the Civil Aeronautics Act subjected both Pan American and Panagra to a detailed regulatory scheme under which their entry into new markets required prior government authorization" (p. 18). As has been demonstrated above, Grace participated in no zoning agreement subsequent to 1938. The Government apparently agrees with Judge Murphy that the agreement was valid during the period when it existed.

C. The Government has not shown an unreasonable restraint of the domestic or foreign commerce of the United States.

If the Government's argument of *per se* illegality is rejected, then no other argument remains. For the same reasons which make *per se* condemnation improper, the zoning arrangement cannot be found to be an unreasonable restraint.

Moreover, the Government has failed to demonstrate that the zoning arrangement had any restraining effect on the foreign or domestic commerce of the United States.

The only instances in which either Pan American or Panagra successfully relied on the east-west zoning arrangement were in the late 1920's and early 1930's when an arrangement was worked out for Panagra to handle the through and local traffic in Argentina between Mendoza and Buenos Aires while Pan American's subsidiary Alas (Wings) handled other local traffic (G-63, G-64; R. 507-09; G-83, R. 535-38; R. 5396), and in 1930 when Grace objected to Pan American's subsidiary operating between Mendoza and Santiago (G-67, R. 512-13; G-68, R. 514; R. 5396).*

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* In other instances the agreement was invoked, but without effect. Pan American objected to Panagra's instituting a route through Bolivia to Buenos Aires, but the route was nevertheless instituted (R. 5397). Pan American also objected to Panagra's flying through the interior of Colombia by way of Medellin or Cali, but the Cali stop was ultimately approved (R. 5397).

E. The scope, terms and duration of the zoning arrangement were as found by the District Court.

While the Government apparently does not challenge the District Court's findings as to the terms and duration of the zoning arrangement which developed between Grace and Pan American,* Pan American does.** It is therefore appropriate to consider the evidence upon which Judge Murphy relied and the contentions advanced by Pan American.

Both the *ad hoc* and temporary nature of the arrangement and its east-west orientation emerge clearly from a contemporaneous memorandum dated March 26, 1937 and signed by Harold Roig of Grace. That memorandum provided in part as follows:

> "In the early days of Panagra and before Pan American had purchased Nyrba, it was felt that in view of the general relationship between Panagra and Panair and the interest of Panair in Panagra, there should be some general understanding as to the respective sphere of activity of the two companies. A gentlemen's agreement was accordingly reached that Panagra's activities would cover the West Coast of South America and Pan American the East Coast and that in respect of the Argentine, Panagra's only interest would be in the line between Mendoza and B. A. and thence to Montevideo. This was definitely a gentlemen's agreement covering the respective ideas of policy as they existed at that time. It was not contemplated that this understanding was not subject to change when it suited the mutual interest or that in the event of such change money payment should be required by one company to the other as a condition to such change" (G-123, R. 589).

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* The Government does, of course, as is noted above (pp. 33-36), contend that there was a broader agreement *implicit* in the formation of Panagra.

** Brief for Appellant Pan American World Airways, Inc. in No. 23 (hereinafter referred to as "PAA Brief") pp. 9-23.

Pan American also recognized the temporary nature of the arrangement and its relation to Panagra's 10-year mail contract. In a letter dated April 8, 1931 from Juan Trippe, President of Pan American, to Panagra Mr. Trippe said:

> "... it was understood by all parties that our Company was to retain full rights to operate air transport lines in the eastern or central part of South America; that Pan American, *during the term of your United States mail contract*, would use your services on the western coast of South America and your present Trans-Andean route to Buenos Aires, and, except between Buenos Aires and Montevideo, you would use Pan American's services elsewhere in the Argentine and South America, the two companies cooperating in their respective spheres" (G-74, R. 521; emphasis supplied).

It is significant that when the Government enumerates the instances when the zoning arrangement was applied, it adverts to no instance in which Grace recognized or relied upon any such arrangement subsequent to 1938. Thus, at pages 12-13 of its brief the Government refers to instances in 1929, 1930, 1931, 1935 and 1937. The Government also refers to an instance in 1946, but, with respect to that instance, says only that:

> "Pan American, in 1946, relied upon the agreement to object to any service by Panagra to Bogota (R. 633-34)" (Brief p. 12).

Inspection of the document which the Government cites, which is a memorandum dated January 22, 1946 from Mr. Dean of Pan American to Mr. Friendly of Pan American, reveals that this was an instance in which Pan American was resisting pressure for an extension of Panagra's routes, pressure applied by Grace. In another instance referred to at page 40 of its brief, the Government says:

> "When Grace had wished Panagra to extend its service from Lima, Peru, to Rio de Janiero, Pan American would not agree."

References cited by the Government (R. 639-40, 651-52, 1285-86, 5397-98) show that in 1950 and 1951 Grace was strongly pressing Pan American for an extension of Panagra's service from Lima to Rio. The extension was blocked, not by any Pan American-Grace agreement, but by Pan American's negative control and its determination to resist Panagra's extension.

Indeed, while Pan American cited the supposed agreement when it served its own interests, Pan American did not consistently recognize it since, for example, it took the position that its affiliate Panair do Brasil could provide services from Lima to Rio (G-162, R. 651-52).

Grace's own actions, as recognized by the Government, belie any notion that it recognized or adhered to any agreement limiting Panagra's operation to routes south of the Canal Zone. As the Government says, beginning in the late 1930's, the dispute which arose between Grace and Pan American:

> ". . . focused largely on Grace's efforts to extend Panagra's operations north of the Canal Zone to the United States. . . ." (Brief, p. 11).

Judge Murphy's findings and the evidence relied upon, both by him and by the Government, show that the *ad hoc* understanding never barred extension of Panagra's routes to the United States and that even the east-west arrangement was vitiated by the termination of Panagra's mail contract and the enactment of the Civil Aeronautics Act in 1938.

Nor do the contentions advanced by Pan American require any different conclusion. Pan American, in an

attempt to justify its unilateral opposition to the extension of Panagra's routes, argues that it entered into an agreement with Grace which truncated Panagra's routes in perpetuity at the Canal Zone. This argument rests principally on a misreading and misinterpretation of Judge Murphy's opinion and on evidence which says only that, when Panagra was organized, the end immediately in view was the development of the route from the Canal Zone south along the west coast of South America.

Pan American relies heavily (P. A. A. Brief, pp. 12-13, 19, 25), as does the Government, on paragraphs in Judge Murphy's opinion, referred to above (pp. 23-25), which do not purport to be findings but which are Judge Murphy's views as to what the "mind bent on finding conspiracy" might conclude. While Pan American makes an extended effort to suggest confusion and confradiction in Judge Murphy's opinion, a reading of the opinion, rather than Pan American's paraphrases and random quotations, reveals clarity and consistency rather than contradiction.

Turning to the evidence, Pan American grounds its argument that Grace and Pan American agreed to a perpetual confinement of Panagra's routes to the west coast of South America principally on the exchange of letters which resulted in the formation of Panagra (R. 5377-78, note 7; P. A. A. Brief, p. 11). Those letters did, of course, refer to the inauguration of a through mail service from the Panama Canal to Valparaiso, Chile. This was the route for which the Postmaster General was expected to accept bids. This reference, however, to the immediate objective of the venture by no means embodied an agreement between the parent companies that, whatever the future requirements for a logical development of the company, it would always be limited to the route described. Indeed, despite

this reference to Valparaiso, Panagra's route was subsequently extended to Buenos Aires.

Pan American seeks to buttress its argument by stating that:

> ". . . Panagra was created for the specific and only purpose of being a *connecting* carrier with Pan American at the Canal Zone, and to serve with Pan American as a *complementary* carrier to supply together air transportation from the United States to South America, . . ." (P. A. A. Brief, p. 17).

The references cited by Pan American, however, with one exception, indicate only that the establishment of the west coast route was the immediate concern when Panagra was organized. The exception is a statement by R. G. Ferguson, Treasurer of Pan American, in his testimony in the District Court that:

> ". . . the objective of Panagra . . . was to operate a connecting line between the Canal Zone and Buenos Aires" (R. 216-17).

Apart from the fact that this was obviously a self-serving statement made in the course of the trial, Mr. Ferguson admitted that he knew the earlier history of Panagra, not first hand, but only through the testimony in C. A. B. Docket 779 (R. 216).

The next bit of evidence from which Pan American seeks to infer the agreement for which it contends is an exchange of memoranda between Messrs. Iglehart and Roig of Grace in March of 1937 (P. A. A. Brief, pp. 21-22; G-118, R. 582-84). The documents do not support Pan American's argument. In that correspondence Iglehart was suggesting that Grace itself institute a direct service from New York through to Buenos Aires (G-118, R. 582-83).

Iglehart contemplated this action as a means of meeting Pan American's threat to back its affiliate Scadta in going to Guayaquil or Quito in Ecuador. The breaches of agreement to which Roig was referring in speaking of meeting "one breach with another" were Pan American's breach in going to Ecuador in competition with Panagra on the west coast of South America and the breach which would exist if Grace instituted a service in Panagra's area down the west coast of South America. In Roig's view at that time, which was prior to the enactment of the Civil Aeronautics Act and prior to the expiration of the ten-year mail contract, both Pan American and Grace were obliged to refrain from instituting service parallelling Panagra's routes on the west coast of South America. That this is what Roig had in mind is apparent from his statement that the question whether it suited to meet one breach of agreement by threatening another might depend on:

> "whether we preferred to scrap Panagra at the expiration of the present mail contract and form a company of our own to compete with Panair on the new contract" (G-119, R. 584).

If Panagra was to be scrapped in any event, there would be less objection to instituting the proposed Grace service.

It is apparent that this exchange of memoranda in no way suggests that Pan American and Grace had agreed to limit Panagra in perpetuity to routes south of the Canal Zone.

Pan American next seeks to derive an agreement barring Panagra from extension to the United States from the so-called "management agreement" whereby a designee of Grace was placed in charge of the management of Panagra in 1939 (P. A. A. Brief, p. 17). Pan American says of this agreement that it provided that an application for extension of Panagra's routes to the United States:

> ". . . should be made only if Pan American's connections with Panagra at the Canal should become inadequate" (P. A. A. Brief, p. 17).

The agreement contained no such limiting provision.

The management agreement did specifically provide that if Pan American failed to provide adequate connecting service it:

> "will cause its directors on the Board of Panagra to take such action as will permit Panagra's applying to the C. A. A. for a certificate to operate this connecting service . . ." (G-190, R. 729).

The agreement by no means indicated that these were the only circumstances in which Panagra could apply for a route to the United States nor was there anything in the agreement which barred, either directly or by implication, Panagra from making such application. Pan American's brief seeks to distort an affirmative obligation to act in a given circumstance into a negative understanding that Pan American was free to veto competition by Panagra in all other circumstances.

Later on in its brief Pan American makes a similar argument with respect to the Through-Flight Agreement entered into in 1946 (P. A. A. Brief, pp. 61-72). Pan American argues that embodied in the Through-Flight Agreement and the concomitant Parent Company Agreement was an understanding that Panagra was "under obligation to continue for the term of the agreement with through flight arrangements instead of a route of its own" (P. A. A. Brief, p. 62).*

* From this Pan American goes on to argue that the CAB approved of an agreement barring Panagra from extending its routes and that Pan American's blocking of such extension was, therefore, immunized from the antitrust laws.

Pan American's contention is plainly inconsistent both with the agreements submitted to the CAB and with the testimony before the Board with respect to the terms of those agreements.

The only agreements submitted to the Board were the Parent Company Agreement (G-267, R. 892 *et seq.*) and the Through-Flight Agreement (PAA-2, R. 1859 *et seq.*). Roig of Grace testified that the only agreement was "in these papers" (PAA-420, R. 4048) and that there was no agreement "other than what is in print here (indicating)" (PAA-420, R. 4110).

A reading of the agreements reveals that there is no provision in either one to the effect that Pan American, in order to protect itself from competition, may prevent Panagra from submitting an application to the Board for its own route. The only provision which touches upon application by Panagra for its own route is paragraph 5 of the Parent Company Agreement (G-267, R. 896). It is there provided that in the event of transfer, abandonment or cancellation of Pan American's route certificates "Pan American will consent" to Panagra's making application. The testimony before the Board was that this provision settled the question of a deadlock in the Panagra board "only in respect of this one situation referred to in that paragraph. It has no relation to any other situation that might arise" (PAA-420, R. 4047).

This provision imposed an affirmative obligation on Pan American effective in one circumstance. It did not relieve Pan American of duties otherwise owed by it as a Panagra stockholder nor of any prohibition imposed upon it by the Sherman Act as a Panagra competitor. If Pan American had desired to include in the agreement a provision barring Panagra from extending its routes to the United States or authorizing Pan American to vote against such extension,

its experienced counsel could easily have done so. No such provision was included.

The agreement submitted to and approved by the Board accomplished only certain limited purposes: (a) Pan American agreed to charter "at the request of Panagra" Panagra planes over certain Pan American routes (which in effect has meant only the Canal Zone-Miami route) (PAA-2, R. 1860); (b) Pan American agreed to maintain Panagra planes, to train Panagra pilots, and to act as sales agent, with certain safeguards designed to protect Panagra (R. 1864-68); (c) Pan American and Grace agreed not to interfere with the performance of the through-flight agreement "in accordance with its terms" and to dismiss the litigation pending between them (G-267, R. 893, 896).

None of these provisions supports an inference that Pan American could, for its own anti-competitive purposes, prevent Panagra from applying for its own routes. It is clear that an agreement by Pan American to charter planes over the Canal Zone-Miami route "at the request of Panagra" leaves the option in Panagra to apply for its own route if it desires to do so. It is also clear that a through-flight arrangement over this route has nothing to do with possible applications by Panagra for routes to other points, such as New York or the west coast of the United States, applications which Panagra's management later proposed that Panagra make, but which Pan American blocked (G-1131, G-1134, G-1135; R. 1662, 1669, 1673). Finally, it is clear that the dismissal of litigation pending at one point in time, did not, in the absence of further agreement, warrant a conclusion that either Grace or Panagra renounced for all time the right to press for an extension of Panagra's own routes.

The testimony about the agreements supports the inference which the agreements themselves require.

The Pan American testimony was:

> "Q. Now, Mr. Friendly, do you understand, as a result of contracts A and B, that Panagra is prevented from applying for a route to the United States in its own name? A. No." (R. 4175).
>
> • • • • • •
>
> "Q. Mr. Friendly, in response to a question by Mr. Schneider on cross-examination, I understood you to say that there was nothing in the agreement involved in this proceeding to prevent Panagra from applying for an independent franchise to enter into the United States; is that correct? A. That is right.
>
> "Q. I would like to know whether there is any understanding outside of the agreement now involved in this proceeding which would so prevent Panagra from applying? A. There is no understanding whatever in regard to Panagra's applying or not applying. Panagra can apply at any time if its board of directors so authorized" (PAA-420, R. 4185).

Mr. Friendly suggested that there was an implication that Grace would not agitate for a Panagra extension (PAA-420, R. 4175), but for the content of this implication Mr. Friendly adopted the Roig testimony as "undoubtedly better" (PAA-420, R. 4176), and this adoption was repeated (PAA-420, R. 4186).

In the testimony adopted by Mr. Friendly, Mr. Roig expressed his *hope* that the matter would not come up again and he expressly denied that there was an understanding that Panagra would not seek to come from the Canal Zone to the United States:

> "Q. Does that imply that the original extension is no longer contemplated, and is not to be sought? A. Yes.
>
> "Q. By Grace management? A. It implies that, yes. It doesn't so expressly provide, but obviously this is a substitute.

"Q. That from here on out those who run the affairs of Panagra have an understanding that Panagra will not seek to come from the Canal Zone to the United States. A. I did not so testify, and that is not the fact. The only agreement between us on that point is in these papers.

"Q. You said it settled it. A. No. I said it was a fair implication. After all, you don't keep on running after the trolley after you got aboard, and we have accepted this, at least for the moment, and as far as I can see, for a good long time. I hope so.

"Q. For 99 years. A. I hope so, as a settlement of this controversy" (PAA-420, R. 4047-48).

Thus, there was no understanding, express or implied. There was merely the "hope" that the 1946 agreements would obviate, "at least for the moment" and as Mr. Roig hoped "for a good long time," the necessity of again presenting the question of Panagra route applications.

The plain fact is that the agreements were completely silent as to Panagra's right to apply for its own routes. There was no agreement which barred Panagra from applying for its own routes or which barred Grace from pressing for such applications if it later appeared advisable, or which gave Pan American the right to veto the making of such applications in order to protect its own competitive position.

Neither in connection with the formation of Panagra, nor in the management agreement of 1939, nor in the Through-Flight agreement of 1946, nor at any other time, did Grace ever enter into an agreement barring Panagra's extension north of the Canal Zone. Judge Murphy's findings as to the limited temporal and geographical scope of the east-west zoning arrangement are not clearly erroneous. On the contrary, they are solidly grounded in the record.

IV.

The District Court correctly held that the restraints imposed upon Panagra were unilaterally imposed by Pan American pursuant to its unlawful attempt to monopolize and its monopolization; those restraints will be remedied by divestiture of Pan American.

While Grace disagrees with some of the Government's charges of restraint of trade, it does not contend that no restraint of trade has been shown in this case. With respect to the Government's contentions that competition in United States foreign commerce in air transportation between South America and the continental United States has been restrained (Brief, pp. 43-47), Grace disagrees only with the Government's position with respect to the source of the restraint. Grace agrees with the District Court that competition has been unlawfully restrained by the confinement of Panagra to South America and the blocking of any extension of its routes to the United States. It is Grace's view, however, that this restraint is not attributable to any action of Grace or to any agreement in which Grace participated. Rather, the restraint is attributable to Pan American's unlawful action in blocking Grace's repeated efforts to secure for Panagra the route extensions which would have completed its development.

The source of the restraint is apparent from the Government's own description of it:

> "Pan American used its negative control over the Panagra Board of Directors to block Panagra's applications to the Civil Aeronautics Board for an extension to the continental United States" (Brief, p. 44).

In this respect, the Government agrees with the findings of the District Court that:

> "Pan American blocked Panagra's independent entry into the United States-South American market in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States, and bound for points on Panagra's west coast routes" (Brief, p. 43; R. 5405).

Pan American seeks to shift the responsibility for the problem by suggesting in its brief that:

> ". . . it was Grace, not Pan American, whose agitation and aggrandizement caused the friction which prompted the Government to institute this action to free Panagra from its divided ownership" (P. A. A. Brief, p. 6).

Apparently what Pan American means is that Grace caused friction by persistently pressing for the route extensions which were logical to Panagra's development, which the Civil Aeronautics Board had solicited, and which would have produced competition between Panagra and Pan American.

In view of the unanimous recognition that Grace has been the party responsible for the effort to extend Panagra's routes, little attention need be devoted to a recounting of the history of Grace's efforts. A word should however, be said about several distortions of the record which appear in Pan American's brief.

Pan American first says that " no question was raised" about extending Panagra's routes to the United States prior to 1938 (P. A. A. Brief, p. xvi). The reason why the issue was not raised before that time is obvious. First of all, during the first decade of its existence Panagra was engaged in establishing itself on its routes within

South America. Moreover, by virtue of the "no-parallel" policy of the Post Office Department described above, it would have been impossible for Panagra to seek extension of its route north of the Canal Zone in competition with Pan American prior to 1938, in any event.

Pan American next points to Grace's acceptance of the Through-Flight Agreement in 1946 and suggests that, if Grace was dissatisfied with Pan American's action in connection with Panagra route extensions, it could have "made a showing of the impropriety in Pan American's conduct and have prosecuted the application in the name of Panagra" (P. A. A. Brief, p. 43). Pan American impliedly criticizes Grace for accepting the Through-Flight Agreement rather than pressing in this Court the litigation which had arisen out of its application, in behalf of Panagra, for a route extension. The Government echoes this attitude when it states that the litigation was "quickly settled by the adoption of the through-flight agreement" (Brief, p. 44).

Judge Murphy's findings adequately explain Grace's action:

> "After the Board certificated Braniff, Panagra was faced with two alternatives: (1) to enter into the Through Flight Agreement and immediately improve its competitive position with Braniff, or (2) continue to press for its own certificates. Under the latter course Grace, on behalf of Panagra, would continue the litigation which it had initiated before the C. A. B. in 1941 which was then pending review by the Supreme Court on certiorari to the Second Circuit.
>
> "The outcome of the appeal of course was uncertain, and assuming it were favorable to Panagra, the matter would still then have to return to the C. A. B. for a consideration of the merits of the action. Panagra simply could not afford the delay which this course of litigation would entail. Its eco-

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V.

Grace's 50% participation in the organization and development of Panagra, while owning all of the stock of Grace Line, did not, and does not, unreasonably restrain trade.

The final issue to be considered in this brief, and the second issue raised by the Government in its Notice of Appeal, is the question whether there is an inherent illegality in Grace's participating, as a 50% partner, in the creation and development of Panagra while owning, as a wholly-owned subsidiary, Grace Line Inc. The Government argued below that an affiliation between an air carrier and a steamship line is *per se* unlawful. The Government now characterizes the affiliation as an unlawful horizontal "merger" (Brief, pp. 61 *et seq.*), but makes no attempt to instance any restraint upon either Panagra or Grace Line which in fact resulted from the affiliation. The argument remains one of *per* se illegality.*

This issue divides itself into two subsidiary questions: (1) Are air transportation and sea transportation between the eastern coast of the United States and the western coast of South America reasonably interchangeable services which form parts of the same competitive market, so that an affiliation between the two could have anti-competitive consequences? (2) If these two services form parts of the same competitive market, does the affiliation through Grace's stock interests in fact unreasonably restrain trade?

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* It should be borne in mind that the Government indicated in its Jurisdictional Statement (p. 2) that it was "not pressing the issue" stated in its Notice of Appeal as to whether "Grace attempted to monopolize, conspired to monopolize, and monopolized all or part of Latin American Air Transportation Service."

A. The services rendered by Panagra and by Grace Line are not reasonably interchangeable; they do not constitute parts of the same competitive market.

The findings of the District Court, and the evidence upon which those findings are grounded, demonstrate that the air services rendered by Panagra and the sea transportation offered by Grace Line are not reasonably interchangeable. Judge Murphy's findings are not contradicted by any evidence to which the Government can point nor by any analogy or inference which the Government can properly draw from Congressional and administrative policies in other areas.

1. The legal test.

The Government recognizes in its brief that the test whether two products or services are sufficiently competitive to constitute parts of the same market is answered by determining whether there is a "reasonable interchangeability" between those products or services and a "cross elasticity of demand" between them (Brief, p. 48). This Court spelled out the applicable rule in *Times Picayune Pub. Co.* v. *United States*, 345 U. S. 594 (1953), where it said that:

> "For every product substitutes exist. But a relevant market cannot meaningfully encompass that infinite range. The circle must be drawn narrowly to exclude any other product to which, within reasonable variations in price, only a limited number of buyers will turn; in technical terms, products whose 'cross-elasticities of demand' are small" (345 U. S. at 612, Note 31).

As this Court pointed out in *United States* v. *E. I. DuPont de Nemours & Co.*, 351 U. S. 377 (1956):

the right to agree with those companies to allocate territories and not to compete. If a parent's stock interest in a one-half owned subsidiary does not insulate from condemnation an *agreement* with the subsidiary not to compete, it logically follows that the same stock interest will not insulate from condemnation the parent's overriding of the wishes of the co-owner of the subsidiary and his *coercion* of the subsidiary not to compete pursuant to an attempt to monopolize.

Pan American's next argument, that a sound economic basis existed for its restraint, stumbles first on the fact that Pan American never advanced any such "economic argument" until the trial of this case. Prior to that time Pan American had made the reason for its restraint quite clear. When Grace proposed the extension of Panagra's route to the United States in 1938 the matter was considered at a meeting of the Pan American Board of Directors. The minutes of that meeting, held on December 28, 1938, record the following:

> "It was the sense of the meeting that it would not be in the interest of our [Pan American's] stockholders for our directors to authorize an application by Pan American-Grace Airways, Inc. to extend north of Cristobal in competition with Pan American Airways, Inc." (G-182, R. 711; see R. 5405).

Judge Murphy found, on the basis of ample evidence, that this same purpose motivated Pan American's action during Panagra's entire history (R. 5405). Indeed, even in 1956, when the Panagra management recommended to its directors, on the basis of a detailed management study (G-1139, R. 1677-1850), that an application be made to extend its routes to Miami, New York, and the West Coast of the United States, Pan American, and its nominees on the Panagra board, refused to consider the proposals on the merits and argued only that Panagra was restricted in

perpetuity to its existing route (G-1134, R. 1669-70; G-1135, R. 1673-76). As Judge Murphy said, Pan American's "intentions in excluding Panagra from [the Canal Zone-United States] sector are beyond doubt" (R. 5407).

Judge Murphy also pointed out there has at all times been a proper forum available to hear and assess Pan American's economic arguments (R. 5407). If Pan American believes that an extension of Panagra's route would be economically unsound it can present to the Civil Aeronautics Board any evidence and arguments it may have in opposition to such extension.* Pan American has, however, arrogated to itself the power to make this determination and, by blocking any application by Panagra, has deprived the Board of an opportunity to rule on the matter.**

Finally, Pan American has failed to show that the imposition of relief appropriate to its violation will hamper

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* Pan American states in its answering brief in No. 47 (p. 4) that competition between Pan American and Panagra has at all times been "economically impossible" and that it "would not have been sanctioned by the CAB. . . ." If that is so, one wonders why Pan American has been so adamant in opposing an application by Panagra which, in Pan American's view, the Board would never have granted. It is also significant that, while Pan American now argues that competition between it and Panagra is economically impossible it filed itself, in 1957, a petition with the Civil Aeronautics Board for extension of its routes to points on the West Coast of South America now served by Panagra. C. A. B. Docket No. 8597.

** In view of the irrelevance of Pan American's economic arguments no extended effort will be made here to analyze and meet them. We note, however, that even in economic terms they do not prove what they purport to show. The economic arguments adduced were constructed for Pan American by a retained expert. Cross-examination, we submit, showed basic deficiencies and bias in the expert's analysis. (See, for example, R. 279-81, 288-90, 294-97, 297-301, 302-12.) The lack of significance attached by Pan American to its argument that the Balboa-Miami route was a low density sector is indicated by the fact that, at the time of the trial, Pan American was seeking before the Civil Aeronautics Board to parallel the principal international route of Northwest Airlines which had a similarly low density (R. 281-82). Pan American was doing so because, so it said, its route from the West Coast of the United States via Hawaii to Japan was "antiquated" and "will become more so when the

the CAB in the performance of its functions or disrupt the Latin American route structure.

Pan American seeks to create the impression that the District Court's judgment involves an allocating of routes and other functions which fall within the authority of the Civil Aeronautics Board. Thus, Pan American talks about the Court's deciding "the affiliation of [a] route" (P. A. A. Brief, p. 54), and speaks of the consequences of Panagra being "given a route between the United States and the Canal . . ." (P. A. A. Brief, p. 55). Pan American also complains that the District Court's judgment would have "the consequence of Panagra's becoming a third American flag carrier into Latin America . . ." (P. A. A. Brief, p. 52).

A reading of Judge Murphy's judgment reveals that it does none of these things. The judgment provides merely that Pan American must dispose of its stock in Panagra. Judge Murphy's judgment does not award to Panagra any new route, deprive Pan American of any route, or otherwise alter the Latin American route structure. Nor does that judgment have the consequence of making Panagra a "third American flag carrier into Latin America. . . ." Far from being a "third" carrier, Panagra was the pioneering American flag carrier on the west coast of South America.*

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jets come into the picture" in comparison with Northwest's great circle route to Japan (R. 230-31), a description equally applicable to Panagra's truncated route as compared with Pan American's route from New York to Buenos Aires. Pan American's economic evidence should also be compared with the study made by Panagra's management showing the feasability and desirability of extending its routes to the United States (G.-1139, R. 1677-1850).

* As the Civil Aeronautics Board said in 1958:

"Panagra is to be commended for developing a self-sufficient air transport system in the important Latin American market; and the Board is confident that Panagra will continue to make every effort to strengthen its position as a service carrier" (*Pan American-Grace Airways, Inc., Mail Rates*, Dkt. 6958, findings and conclusions of April 25, 1958 confirmed May 13, 1958).

It is evident that the judgment of which Pan American complains does not create a new airline, increase subsidy requirements, or otherwise impair the capacity of the Civil Aeronautics Board to deal with the question of routes. Judge Murphy's judgment further insured that the divestiture of Pan American would not be disruptive of our Latin American air transportation policy by giving the Civil Aeronautics Board an opportunity to participate in the formulation of the divestiture plan. Far from encroaching on the Board's authority, the judgment, by freeing Panagra so that it can make such applications to the Board as appear to be in its and the public's interest, will enable the Board to determine freely what the public convenience and necessity requires.

Judge Murphy's judgment does not create any problem of route structure which did not exist prior to the entry of that judgment. The judgment merely corrects a problem which has long frustrated the Civil Aeronautics Board, *i. e.*, the problem of freeing Panagra from Pan American's unlawful domination.*

It is submitted that the only unlawful restraint which the record shows is the restraint unilaterally imposed by Pan American and that Pan American's restraint can only be adequately remedied by the divestiture which the District Court ordered.**

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* In the United States-South America Route Case, Dkt. 12895, the Board is presently reviewing the South American route structure. After determining what route structure is likely to be soundest the Board proposes to secure that structure by appropriate "alteration, amendment, modification, suspension, or cancellation in whole or in part" of the certificates of Pan American, Panagra and Braniff. Judge Murphy's judgment does not, of course, affect the Board's authority to make such revisions.

** We do not undertake to discuss the issue of Pan American's position in the relevant market or its enumeration of considerations which, in its view, render divestiture inappropriate. Nor do we consider, beyond what is set out above, Pan American's primary jurisdiction argument. We assume that all of these matters will be dealt with in the Government's brief in No. 23. We are of the view, however, that in all of these areas the findings and conclu-

> ". . . one can think of building materials as in commodity competition but one could hardly say that brick competed with steel or wood or cement or stone in the meaning of Sherman Act litigation: the products are too different" (351 U. S. at 393).

Even where products superficially appear to be quite similar, the characteristics of the demand for them may require the conclusion that they are not "reasonably interchangeable." Thus, in *International Boxing Club* v. *United States*, 358 U. S. 242 (1959), this Court held that championship and non-championship boxing matches were sufficiently distinct to constitute separate markets despite their obvious similarities.

It is clear that in determining whether air transportation and sea transportation compete in the sense which the Sherman Act contemplates it is not enough to determine how many people or how many pounds of goods are conveyed by each of the two modes of transportation. The relevant question is: What are the differences between the services and do these differences indicate that a purchaser or potential purchaser of one service would not regard that service as reasonably interchangeable with the other?

2. Passenger transportation.

It is precisely from this point of view that Judge Murphy approached the problem. With respect to passenger transportation Judge Murphy noted the difference in time element: "from New York to Santiago by air takes today about 12 hours—by steamer 20 to 21 days" (R. 5426). While the comparison is slightly less striking on the shorter trips, it is still impressive. Thus, from New York to the Canal Zone by air is a 10-hour trip whereas by steamship it is a voyage of 6½ to 7½ days (WRG-168, R. 5204).*

* Since jets have been introduced the discrepancy is even greater.

Judge Murphy also noted the significant difference in fare, with Panagra in every case offering a less expensive service than Grace Line. The Panagra fare to Lima ranges from $308.80 to $399.80; the steamship fare ranges from $515.00 to $1,510.00 in the winter season and from $435.00 to $1,220.00 in the summer season (R. 5426; WRG-168, R. 5205).

Judge Murphy asked the following very pertinent questions:

> "Is the passenger who is willing to spend 6 weeks on a steamer the same as the person who wants to fly somewhere and back in a hurry? Is the person who desires to transact business in a far away South American city and return a potential steamship passenger to and from the same city?" (R. 5426)

Judge Murphy concluded that he was "not persuaded that the proof in this case shows that the market is the same" (*ibid.*).

The Government says nothing which challenges this conclusion. It does not do so by pointing to the testimony of a Pan American witness (whose bias was apparent) that more than one-half of all air passengers to South America travelled for non-business reasons (Brief, p. 50). It is apparent from the differences between air and sea transportation on this route that the tourist, like the businessman, would not regard these services as reasonably interchangeable. If a person has six weeks to devote to a vacation, he certainly cannot place in the same category an air trip to Santiago which would consume 24 hours round trip and a steamer trip to the same place which would consume the entire six weeks. Such services are interchangeable only in the sense that a ski lodge at Sun Valley competes with The Waldorf-Astoria in New York or a hotel in the Caribbean competes with a fishing lodge in Canada. Of course, all of these present alternatives to the vacationer;

nomic life hung in the balance. If Panagra did not get to the United States, at least by way of a through flight interchange agreement with Pan American, and if Braniff commenced such operations under the authority granted by the Board, Panagra's economic position would rapidly deteriorate. Cf. *New York-Balboa Through Service, Reopened*, 18 C. A. B. 501, 505.

"Grace and Panagra succumbed to the restraint of Pan American and acquiesced in the Through Flight Agreement" (R. 5414).

As has been pointed out above, there was no term of the Through-Flight Agreement, or any related agreement, which barred Panagra from applying for its own routes to the United States. Nor did Grace's action in accepting the Through-Flight Agreement represent an agreement or understanding voluntarily entered into to limit Panagra's development. Rather, in the face of Pan American's opposition, and in the light of the risks and uncertainties ahead, Grace accepted the best alternative available to it at that time.

There can be no real issue as to the source of the restraint which prevented Panagra from extending its routes to the United States. The only issue which deserves discussion is the question whether the restraint imposed by Pan American was unlawful. We submit that Judge Murphy properly held that it was.

While we do not propose to meet Pan American's brief in detail, since that task will presumably be performed by the Government, we believe it necessary and appropriate, as the party principally injured by Pan American's restraint, to sketch, at least in general terms, Grace's position.

Pan American attacks the judgment below on three principal grounds: (1) that its voting against allowing

Panagra to apply for route extensions was a lawful exercise of its rights as a holder of one-half of Panagra's stock; (2) that its opposition to these route extensions was based upon sound economic reasons rather than any attempt to monopolize; and (3) that the order requiring it to divest will embarrass the Civil Aeronautics Board in its development of a sound Latin American route structure.*

Pan American's argument that its half-ownership of Panagra gives it an inherent right to block Panagra's extension to the United States is expressed principally in terms of a "simple illustrative example" (P. A. A. Brief, p. 26). The example postulates a situation where Jones and Smith join in opening a department store in Providence and where Jones subsequently objects to the Providence venture's opening a store competitive with Jones' individually owned store in Boston. The illustration is "simple" and also misleading for the very reason that it excludes the facts which distinguish that example from the situation here, facts which mark Pan American's conduct as unlawful.

In the first place, Pan American's example does not involve a situation in which the proposed extension of the joint venture represents a logical extension of its activities. What Grace has been seeking for Panagra is the natural extension of Panagra's routes to the sources of the bulk of its traffic. There is no similar logic about the extension

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* We will not consider Pan American's further argument that its opposition to route extension for Panagra was specifically approved by the CAB and therefore exempted from the Sherman Act, since we have already demonstrated (pp. 54-58, *supra*) that no agreement authorizing such action was ever presented to the Board. Nor will we consider Pan American's argument that it did not "exclude" Panagra from the Canal Zone-United States market, since we regard it as quite obvious that there is a sufficient "exclusion" in action which allows Panagra access to the market only in a through-flight arrangement with Pan American.

of Pan American's hypothetical venture from Boston to Providence.

Passing this, however, if we add a few additional facts to Pan American's illustration, analogous to facts which the District Court found in this case, the illustration is radically altered. Suppose, for example, that Jones' store in Boston is one of a very few stores in that city and occupies a dominant position in the market. Suppose further that the Providence venture is one of a very few enterprises which could reasonably enter into the Boston market in competition with Jones. Suppose, finally, that the very purpose of Jones' voting against the extension of the Providence venture is to preserve his dominant position. It is submitted that, with this additional background filled in, the violation inherent in Jones' conduct becomes evident.

Judge Murphy did not condemn Pan American's conduct on the basis of the broad kind of ruling which Pan American assumed in constructing its illustration. Rather, he carefully limited his ruling to the situation before him:

> "We would like it clearly understood that it is not our opinion that every defendant who exercises similar negative control over a single potential competitor and thereby excludes such competitor from a relevant market necessarily monopolizes thereby. It is a relative concept which can only be applied in a given context. Here, the excluded competitor is the most potential of a very limited number of competitors and one that enjoys a substantial share of the relevant market, and in which share the exclusiona y action of Pan American guarantees it participation. One result is that competiti n between the two for their significant shares of the market is to a substantial degree restrained. Other factors we con-

> sidered are the nature of the industry, the size and strength of the two companies involved, and the limited market potential.
>
> "We feel that the affirmative blocking of a Panagra application to the CAB is sufficient under the facts presented to make out the violation by Pan American of monopolization. . . ." (R. 5408-09).

Pan American's contention is effectively answered, not only by Judge Murphy's reasoning, but by rulings of this Court. It is of course clear that a party dominant in a market who seeks to monopolize may violate the Sherman Act by the commission of acts or practices which would otherwise be lawful. *E.g., United States* v. *Aluminum Company of America*, 148 F. 2d 416 (2d Cir. 1945). Moreover, this Court has recently emphasized that the exclusion of a single competitor from a market may have antitrust consequences, *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U. S. 207 (1959); *Radiant Burners, Inc.* v. *Peoples Gas Light & Coke Co.*, 364 U. S. 656 (1961). In *Gamco, Inc.* v. *Providence Fruit & Produce Building Inc.*, 194 F. 2d 484 (1st Cir. 1952), *cert. denied*, 344 U. S. 817 (1952) the court ruled that:

> ". . . the latent monopolist must justify the exclusion of a competitor from the market which he controls. . . . The conjunction of power and motive to exclude with an exclusion not immediately and patently justified by reasonable business requirements establishes a *prima facie* case of the purpose to monopolize" (194 F. 2d at 488).

Pan American's argument that its conduct is justified by its stock interest in Panagra is effectively answered by this Court's ruling in *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593 (1951). This Court there held that the fact that Timken owned one-half of French Timken and approximately one third of British Timken did not give it

4. The Government's authorities.

The Government finally seeks to rely upon judicial and administrative decisions, and the policies allegedly embodied in certain statutes, to show that there is competition between air and sea transportation. All of these instances are quite beside the point since none of them says anything about competition between air and sea transportation on the routes here in question. Grace has never contended, and does not now contend, that air and sea transportation can never compete. In determining whether competition exists on particular routes, the characteristics of those routes, and particularly their length, are significant. Grace contends, and believes that it has demonstrated, that air and sea transportation are not reasonably interchangeable on the particular routes involved in this case.

The Government's reliance on the decision in *Lehman* v. *Civil Aeronautics Board*, 209 F. 2d 289 (D. C. Cir. 1953), *cert. denied*, 347 U. S. 916 (1954), is misplaced for this very reason. In that case the court held merely that it would not upset the findings of the Civil Aeronautics Board that the services offered by the two carriers involved in that case were competitive. Moreover, the steamships and the air lines involved there were operating over the relatively short distances of the Caribbean and a great disparity between the duration of the sea and air voyages did not exist. Even in that case Judge Prettyman, in a vigorous dissent, expressed the view that the carriers were not in competition and that the Board's findings should be set aside:

> "To say that the competition between these two could create a conflict of interest which might produce results not in the public interest is without support in the facts, in my judgment. Of course there is

> a sort of competition between them, just as in some senses there is competition between all merchants of goods or services. But the totally different services proffered by these two companies make it wholly unrealistic to say that the public interest would be affected adversely by the presence of the same man on the two boards of directors" (209 F. 2d at 295-96).

The Board's ruling in *Additional Service to Latin America,* 6 C. A. B. 857, 903-04 (1946), also relied upon by the Government (Brief, pp. 59-60), is irrelevant for the same reason. There the route involved was between New York and San Juan, quite a different matter from the much longer routes to western South America. The Board's discussion related to "air transportation and . . . surface transportation *on this route*" (6 C.A.B. at 903-04; emphasis supplied).

The Civil Aeronautics Board has itself held in other circumstances that air and steamship transportation may not be competitive. In *Interlocking Relationships,* 6 C. A. B. 399 (1945), the Board held certain parallel steamship and air services not to be competitive:

> "a substantial portion of the passenger business would appear to be the taking of persons on summer cruises, which obviously is not competitive to the rapid transportation of passengers by air" (6 C. A. B. at 401).

The Government cites a series of statutes which give agencies such as the Interstate Commerce Commission and the Civil Aeronautics Board the authority to regulate to some degree the entry of carriers engaged in transportation by one means into parallel transportation by another means. None of these statutes, however, proves that the particular

by a comparison of the rates charged by the two companies. There was evidence before the District Court which provided a detailed comparison of these rates. This evidence showed, for example, that the rate charged for shipping a ton of goods via Panagra from New York to Santiago was $1,660 whereas the rate charged for the same weight over the Grace Line route was $90 (WRG-168, R. 5224). The evidence in the record also compared the rates charged for certain specific commodities. This comparison showed, for example, that to ship 2,000 pounds of auto parts from New York to Santiago would cost $1,260 on Panagra and $32 on Grace Line. Indeed, on certain bulky items Grace Line offered rates even lower than those specified above (WRG-168, R. 5224-25). With differences in rates of this order of magnitude it is apparent that the two services are not "reasonably interchangeable" and are not used for the same purposes. If they were, Panagra could not long stay in this business.

These differences in the rates charged for transportation by air and sea are grounded in the basic economics of air and sea cargo transportation. They directly reflect a difference of the same order of magnitude between the costs of carrying goods by each of these two means. A detailed break-down of the cost of carriage by Panagra and by Grace Line demonstrates that the cost of transporting goods by air was $0.356 per revenue ton mile whereas the cost of carrying goods by Grace Line freighter service was $0.00653 per revenue ton mile (WRG-168, R. 5227). A publication of the Office of the Chief of Naval Operations describes the cost of air transportation of cargo as being about 40 times as much as the cost of sea transportation (WRG-168, R. 5212).

These comparisons demonstrate that air transportation of cargo is designed to serve a market quite different from

the sea cargo market. Although there may be minimal competition between the two in very limited areas, the air lines will never carry the bulky cargos or great volume of cargo presently carried by sea, nor can the shipping lines meet the need for speed or emergency cargo shipment which is met by the air lines. That this is true was recognized by the Government's own expert witness.

Professor Stanley H. Brewer, who was tendered by the Government as an expert in air cargo operations and the competition between air and sea cargo carriage, testified among other things as follows:

> "When we talk about a future in air cargo we are talking about something less than 1% of the total amount" (R. 112).
>
> ". . . the vast majority of export freight, tons and ton miles, were of commodities that couldn't possibly have been carried by air-plane" (R. 112).
>
> ". . . only a relatively few of the many thousands of commodities which are now moved in world commerce can be considered to be [air] candidates in the foreseeable future" (R. 113).
>
> ". . . steamship rates on quantity movements are far below attainable cost for moving freight by air in the foreseeable future" (R. 115).

His farthest forecast was to 1975 and he predicted that by that time air carriers might achieve 7/10 of 1% of the total cargo movement (R. 123).* Even on the most specu-

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* Even these figures were based upon highly questionable calculations and predictions. Professor Brewer himself recognized that there have long been "predictions of mountains of cargo moving by air" and that the air cargo movement hasn't come up to these expectations (R. 111). He recognized that the data were "very difficult to interpret" (R. 115). His entire testimony rested on the "basic assumption" that cargo valued in excess of $.70 per pound was potential air cargo (R. 124). Yet nowhere in his reports or his testimony was there any basis for this assumption (R. 125-26).

air and sea services involved in the case now before this Court are competitive.

For all of the reasons stated, we submit that Judge Murphy's finding that air transportation and sea transportation between the eastern coast of the United States and the western coast of South America do not form parts of the same competitive market is solidly grounded in the record and cannot properly be set aside as "clearly erroneous."

B. Grace's participation in the organization and development of Panagra while owning all of the stock of Grace Line did not, and does not, unreasonably restrain trade.

Judge Murphy correctly observed, after considering and rejecting the Government's evidence tendered to show the existence of competition between Panagra and Grace Line, that:

> "The Government does not prove violations of the antitrust law by showing that Grace Line competes with Panagra, assuming that it does" (R. 5429).

Even on the assumption that these services are in the same competitive market, the Government has not demonstrated that Grace's entry into the new field of air transportation violated the Sherman Act.

1. A new venture cannot be equated with a merger.

The first objection to the Government's argument is that it rests on the assumption that there is no meaningful distinction between the acquisition of existing competitive facilities and the entry into an enterprise designed to develop facilities which did not theretofore exist. Thus the Government relies solely on cases involving a merger

of existing facilities: three railroad cases* and the decision in *United States* v. *Columbia Steel Co.*, 334 U. S. 495 (1948) (Brief, pp. 61-62). It is apparent, however, that there are important differences between these situations which cannot be disregarded.

A merger necessarily produces some lessening of competition since it brings under common ownership facilities which had previously been able to compete. Development of new facilities, however, has no such effect. The new facilities were not in the market at all prior to the creation of the venture which produced them. This Court recognized in the *Columbia Steel* case that

> ". . . no direction has appeared of a public policy that forbids, *per se*, an expansion of facilities of an existing company to meet the needs of new markets of a community, whether that community is nation-wide or county-wide" (334 U. S. at 526).

See also *United States* v. *E. I. DuPont de Nemours & Co.*, 118 F. Supp. 41, 219 (D. Del. 1953), *aff'd*, 351 U. S. 377 (1956). In *Inter-Island Steam Navigation Co.* v. *United States*, 87 F. Supp. 1010 (D. Hawaii 1950), the court ruled on the very question involved here, *i.e.*, whether it violated the Sherman Act for a water common carrier to organize a subsidiary air common carrier for the purpose of having the latter transport passengers over routes substantially paralleling the water carrier's routes. The court concluded that:

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* This Court cast considerable doubt on the continuing authority of these railroad cases in *United States* v. *Columbia Steel Co.*, 334 U. S. 495, 531 (1948). The cases have been criticized as "reflecting a point of view toward the railroad problem which has long since been abandoned by the country." Handler, *Industrial Mergers and the Antitrust Laws*, 32 Colum. L. Rev. 179, 270, note 328 (1932).

but they surely are not competitive for Sherman Act purposes. If they are, the relevant market must be expanded to include far more than the air transportation offered by Panagra and the sea transportation offered by Grace Line.

Although the Government states that cross-elasticity of demand may be measured by a correlation between changes in price differentials and corresponding shifts in demand, the Government fails to demonstrate the existence of any such correlation. The Government points to the fact that "the air carriers' share of passenger traffic to South America has risen from only ½ of 1% in 1931 to more than 84% in 1957" (Brief, p. 49), but it fails to show that the increasing air traffic was drawn from the sea lanes by a reduction in the differential between the fares or by other means of competition. Indeed, there is nothing in the record to show what the differential in fares was over this period of time. The Government merely makes a completely unsupported statement that if sea carriers are desirous of retaining a share of the passenger traffic they must do so by lowering fares and developing other attractions to compensate for the lack of speed (Brief, p. 49). It is quite clear that the passengers who travel by Grace Line do so, not by virtue of some competitive inducement, but because they want a sea voyage. So far as lowering fares to compensate for the lack of speed is concerned, the record shows that Grace Line's fares are substantially in excess of Panagra's (WRG-168, R. 5205).

The Government is apparently relying upon the kind of reasoning embodied in the statement which it later makes when it discusses cargo traffic that:

> "... if there were no air transportation available it would unquestionably move by water. . . ." (Brief, p. 53).

There are two deficiencies in this kind of argument.

First, there is every reason to believe that the greater part of the presently existing air traffic is traffic which did not exist prior to the development of air lines and which would not have existed if it had not been for that development. A great proportion of the present air traffic, both passenger and cargo, is undoubtedly new traffic which could not possibly have been carried by sea. Among the examples which jump to mind is the tourist who has only two weeks to spend and who now uses it in an air flight to Santiago.

The second difficulty in the Government's approach is that even traffic which once went by sea may be traffic for which steamships could not compete once air lines had come into existence. At the moment when the first air line became established as a safe and reliable means of transportation there was undoubtedly a substantial amount of traffic, which previously went by sea, but for which sea transportation was no longer a reasonable alternative. An example is the man who wishes to go to Santiago solely for the transaction of important business which will require only a few days' time.

A consideration of the important differences between air transportation and sea transportation on these particular routes makes it evident that the great bulk of passengers carried by Panagra are passengers for whom Grace Line's steamships do not offer a reasonable alternative and that the passengers carried by Grace Line are passengers who for some reason desire a lengthy voyage by sea and for whom air transportation does not offer an acceptable alternative. This conclusion is reinforced by the very statistics upon which the Government relies.

As the Government recognizes, a large portion of Panagra's passenger traffic is to points which Grace Line does not even serve (Brief, p. 50, note 17). And even on the routes served by both Panagra and Grace the number of

passengers who travel by sea are only a very small percentage of those who travel by air. Thus, between the United States and Colombia in 1958 only 4.2% of the passengers travelled by sea (WRG-168, R. 5198); between the United States and Ecuador the figure was 10.1% (WRG-168, R. 5199); between the United States and Peru the figure was 7% (WRG-168, R. 5200); and between the United States and Chile the figure was 14% (WRG-168, R. 5201). Moveover, the statistics also demonstrate what is suggested above, *i.e.*, that the bulk of the presently existing air traffic is newly developed traffic, rather than traffic which was secured by competition with the parallel steamship carrier. For example, the number of passengers between the United States and Colombia by sea decreased only from 3,120 in 1931 to 1,676 in 1958 (WRG-168, R. 5198). During this same period the number of air passengers increased from 23 to 38,178 (WRG-168, R. 5198). Similarly, between 1948 and 1958 the number of passengers by sea between the United States and Chile decreased only from 3,251 to 2,279 whereas the number of passengers by air increased from 2,714 to 14,434 (WRG-168, R. 5201).

Although the Government seeks to attribute the increase in air travel to "shifts in customer preferences . . . in response to changes in passenger fares", and speaks of an "interplay" between these services (Brief, p. 49), it cites no evidence in support of the alleged changes in passenger fares or the shifts allegedly resulting from them. The important differences between these modes of transportation strongly support Judge Murphy's conclusion that no significant "shifts" or "interplay" occurs.

3. Cargo traffic.

Turning to cargo transportation, it is first of all relevant to compare, as the District Court did, the total amount of

cargo which is moved by air and sea respectively on the relevant routes. Judge Murphy found that "as between the two the volume of cargo carried by Panagra as compared to Grace was miniscule" (R. 5428). The Government criticizes this characterization and uses the device of describing air freight in terms of "revenue ton miles." The large-sounding figures given for revenue ton miles must be evaluated with recognition of the fact that such a figure represents a multiplication of the number of tons carried by the number of miles over which they are carried. Thus, if one ton is carried 1,000 miles it represents 1,000 ton-miles.*

A comparison with the amount of cargo carried by sea can best be made in terms of the number of tons of cargo carried over the particular routes in question. The record shows that in 1958, the last year for which there was evidence before the Court, Panagra carried 3,321 tons of freight whereas Grace's route from the east coast of the United States to the west coast of South America (Line "A") carried 936,585 tons. In 1957 Panagra emplaned 349 tons of cargo in Chile whereas Grace Line carried 294,550 tons of cargo from that country (WRG-168, R. 5224). The word "miniscule", which Judge Murphy used, was well chosen.**

The vital difference between the cargo service performed by Grace Line and that performed by Panagra is illustrated

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* The Government is to be congratulated for its restraint; it might have spoken in terms of pound-inches.

** Since the Government goes outside the record to refer to the fact that Panagra carried 8,000,000 revenue ton-miles of cargo in 1961 (Brief, p. 53), we will take the same liberty. In 1961 Panagra carried 4,405 revenue tons of cargo and Grace Line carried 999,036 tons on its run between the east coast of the United States and the west coast of South America. (Figures derived from Panagra's Form 41 Reports to the Civil Aeronautics Board and Grace Line's Schedule 3002 of Form MA-172 filed with the Maritime Administration).

lative assumptions which the Government's witness advanced, it is clear that there will be no significant infringement by air cargo service upon the business presently done by the water carriers.

While the Government presented several witnesses (R. 77-89, 89-104, 127-49), whose testimony apparently did not impress the trial judge, for the purpose of citing a few instances of situations in which air cargo carriers had transported goods which might have been carried by steamship, these involved rather special situations which fell far short of demonstrating a "reasonable interchangeability" of the two services. Moreover, the only instance the Government was able to show which involved transportation between the United States and the west coast of South America was a movement of 500 tons of onions from Chile to New York (R. 104). It is on this kind of evidence that the Government attempts to base its demonstration of "reasonable interchangeability" and substantial competition.

The Government seeks to reinforce its statistical arguments by referring to several bits of evidence which it suggests constitute a "recognition by the parties of competition between air and sea transportation" (Brief, p. 60). The first bit of evidence is testimony by Pan American's treasurer, Mr. Cornwall, to the effect that air and sea carriers to South America are "very definitely" in competition for passengers and "are both trying to get the same market" (R. 229). In the context of this litigation Pan American's treasurer can hardly be regarded as an unbiased witness. Moreover, Mr. Cornwall admitted that he had "no particular knowledge" about the movement of cargo between the United States and the west coast of South America (R. 66).

The Government next states that:

> ". . . Grace has always candidly admitted that 'Panagra is a direct competitor of the Grace Line,' and that Panagra's development had resulted 'in prejudice to the Grace Line.' " (Brief, pp. 60-61)

The only thing cited in support of this sweeping statement, however, is a single paragraph which the Government has excerpted from a 1941 draft of a letter which was never sent (G-378, R. 1027). The letter which was actually sent on this particular occasion is G-207 (R. 759-61); the cited paragraph does not appear in that letter. It may be that the paragraph upon which the Government relies was excised from the letter as finally sent precisely because it was not an accurate statement. In any event, this bit of evidence does not constitute an admission by Grace that Panagra is, or was, a "direct competitor" of Grace Line and certainly does not demonstrate that the two companies' services are "reasonably interchangeable" for Sherman Act purposes.

Another bit of evidence relied upon by the Government in this connection demonstrates that instances of competition between Grace Line and Panagra were the exception and that the services were not generally competitive. In a letter from which the Government quotes in part at page 61 of its brief, Mr. Roig of Grace cited certain shipments of gold as ". . . *one of the few instances* which have arisen involving a conflict of interest between Panagra and Grace Line" (R. 1003; emphasis supplied). If the few shipments referred to are the only instances the Government has been able to find in the long history of Panagra where Grace Line and Panagra competed for a shipment, then this, in itself, strongly demonstrates the absence of "reasonable interchangeability."

> "There is nothing in the statute to prevent a corporation from entering a virgin field, and, through a subsidiary or otherwise, engaging in a pioneer enterprise. . . . In a word the Sherman Act is not an instrument of stagnation" (87 F. Supp. at 1016-17).

Judge Murphy also cited and relied on an unreported decision in the District of Hawaii which reached this same result (R. 5423-24).

Even in imposing the more stringent limitations of Section 7 of the Clayton Act, Congress recognized the differences between a merger and the organization of a subsidiary for the development of a new enterprise:

> "Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition."

In seeking to equate the development of this new venture with a "horizontal merger" the Government ignores the fact that the existing facilities of Panagra are the result of Grace's own vision and creative efforts. To say that competition is restrained by Grace's affiliation with an instrumentality which it brought into existence surely misses the mark.

2. No substantial competition is eliminated by the affiliation.

Even if this Court were to apply to the organization of a new venture the same test which has been applied to

the acquisition by one corporation of the existing facilities of another, it would not follow that Grace's interest in Panagra is unlawful. It has, we believe, been shown above that air transportation and sea transportation on the routes involved in this case are not in the same competitive market. If, however, the Court disagrees, the evidence cited above certainly demonstrates at the very least that the areas of actual or potential competition between Grace Line and Panagra are insubstantial.

This Court has held that a merger does not violate the Sherman Act when the pre-existing competition between the merging companies is not substantial. For example, in the *Columbia Steel* case, *supra,* this Court recognized that the acquired company manufactured welded pipe and that one of the acquiring company's subsidiaries manufactured seamless pipe. Relying principally on the significant difference in price between the two products, the Court held that it had not been shown that the competition was "so substantial that its elimination under these circumstances constitutes an unreasonable restraint" (334 U. S. at 530-31).

Analysis and comparison of the operations of Grace and Panagra reveal that, if any possibility of competition exists, it is so insubstantial—both absolutely and in relation to the total operations of Grace and Panagra—that, even if it were eliminated, there would be no unreasonable restraint.

The affiliation which exists here is between W. R. Grace & Co. and Panagra. It should first be noted that Grace Line represents only a small segment of the interests of W. R. Grace & Co. and that Line "A", the line which to some degree parallels Panagra, represents only a small part of the interests of Grace Line. As Judge Murphy found, the operating revenues of Grace Line were less than one-fifth of the operating revenues of Grace (R.

It is respectfully submitted that the judgment of the District Court should be in all respects affirmed.

Respectfully submitted,

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October 15, 1962.

APPENDIX A.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, Plaintiff, *against* PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, and PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.	Civ. 90-259.

Memorandum.

MURPHY, D. J.

The court will not approve the proposed consent decree and hereby orders the parties to trial on May 4, 1959.

We have given serious consideration to arguments of counsel for and against the proposed decree and we have written several draft memoranda expressing our reasons for the withholding of our approval. After continued reflection we have concluded it to be a wiser course not to express any opinion but await the outcome of the trial on the merits.

This is an order. No settlement is necessary.

/s/ THOMAS F. MURPHY
U. S. D. J.

Dated, New York, N. Y., January 30, 1959.

5427; WRG-168, 5183), and Line A accounts for only one-fifth of Grace Line's passenger revenues and less than one-half of its freight revenues (R. 5427; WRG-168, 5184).*

The next important difference between the two services is that Panagra is primarily a carrier of passengers whereas Grace Line is primarily a carrier of cargo. As Judge Murphy held, Panagra carried less than four-tenths of one percent of the tonnage of cargo carried by Line A between 1950 and 1958 (R. 5427). Similarly, Panagra carried 25 times as many passengers as Line A during this period (*Ibid.*).**

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* Even Line A is by no means precisely parallel with Panagra's service (WRG-168, R. 5185). For example, the most important South American source of traffic for Panagra is Buenos Aires, which is not served by Line A (R. 5427; WRG-168, 5185).

** The Government criticizes this 25-1 comparison (Brief, p. 50, note). It is submitted that the comparison is, however, useful in showing where the real interests of the two carriers lie. The Government goes on to say that Panagra carries 1,100 persons per month between the areas served by both carriers whereas Grace Line carries 315 persons per month. The Government is referring to figures for 1957 set out in GS-79 (R. 1433). These figures, however, are seriously biased. The Civil Aeronautics Board figures which the Government uses show the initial air origin and the ultimate air destination of each passenger. Thus when the Government sets out Panagra's passenger traffic from the northeastern United States to western South America it includes only those passengers whose air travel actually began in the northeast. The Maritime Administration figures from which Grace Line's passenger traffic is computed, however, are based upon port of embarkation and port of debarkation. Since Grace Line seldom takes on passengers except in the North Atlantic coastal area, virtually all of its traffic is included. Obviously many of Grace Line's passengers commence their journeys elsewhere in the United States. The least biased comparison which can be made on the basis of the Government's figures is to compare Panagra's average monthly passenger traffic between the United States and western South America, for 1957 as shown by GS-10 (R. 1367), which is 2,199, with Grace Line's average monthly passenger traffic for 1957 as shown by GS-77 (R. 1431), which is 310. Following the Government's example and bringing the record up to date, we note that in 1961 Panagra averaged 4,618 passengers per month between the United States and South America (excluding Argentina) whereas Grace Line on Line "A" averaged 278 passengers. (Figures derived from Pan-

Moreover, the considerations adverted to above (pp. 72-82) demonstrate that even with respect to the passenger transportation and the cargo transportation which is conducted by Panagra along the routes where Grace Line operates, most of the traffic is in no sense competitive. Most of the passengers who travel on Panagra planes and most of the freight which is shipped on them could not possibly go by sea. Conversely, the passengers who travel by Grace Line desire a sea voyage which Panagra cannot provide and the great bulk of the cargo which Grace Line carries can never go by air.

It is evident that the area in which Grace Line and Panagra could possibly compete represents only a very small segment of the operations of each.

Indeed, examination of the Government's case reveals a complete failure of proof as to how much, if any, of the traffic which Panagra carries is traffic for which Grace Line could compete. There is no way of determining from the Government's evidence whether Panagra carried a single passenger during the period in question who regarded steamship passage as a reasonable alternative. Nor, apart from a few gold shipments back in the 1930's, has there been any evidence that Panagra carried any freight as to which steamship carriage was a reasonable alternative, or that Grace Line carried any freight as to which air transportation was a reasonable alternative. Since the Government has not shown either that Grace Line and Panagra really compete with respect to any traffic, or, if they compete, the scope of the area in which competition exists, its case is glaringly deficient.

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agra passenger manifests for January, April, July, and October, 1961 and Grace Line Schedule 3002 of Form MA-172, filed with the Maritime Administration). At the present time Panagra has a capacity, on its southbound flights of 4,916 seats per month whereas Grace Line offers 240 berths per month on its southbound sailings on Line "A" to points on the west coast of South America.

3. There is important competition from other sources.

The Government's handling of the question of the strength of the competition from other sources is also inadequate. It is, of course, true that Grace Line offers the only United States-flag liner service from the east coast of the United States to the west coast of South America. This is for the simple reason that Grace Line is the only line subsidized on this route by the United States Government. The Government ignores, however, the very substantial foreign competition which exists both with respect to steamship services and with respect to air services along these routes.

The record shows that United States-flag participation in passenger traffic by air between the United States and Chile decreased from 99.8% in 1953 to 36.6% in 1957 (WRG-168, R. 5252); the United States-flag share of the passenger traffic between the United States and Peru decreased from 99.9% in 1953 to 73% in 1958 (WRG-168, R. 5253); the United States-flag participation in passenger traffic between the United States and Ecuador decreased from 86.9% in 1954 to 70.1% in 1957 (WRG-168, R. 5254). The United States-flag share of the passenger traffic between the United States and Colombia has fluctuated around 30% during the period from 1953 to 1958.

A similar picture exists with respect to steamship competition. The United States-flag share of dry cargo (imports and exports) between the United States and South America decreased from 86.4% in 1946 to 33.3% in 1957 (WRG-168, R. 5293). Between 1955 and 1958 the United States-flag share of the carriage of dry cargo by sea between the United States Atlantic Coast and the west coast of South America decreased from 45.07% to 26.17% (WRG-168, R. 5298).

Against this background the relevant questions are as follows: Would Grace Line's position in the cargo market be enhanced by giving it the power to restrain competition for the miniscule amount of cargo carried by Panagra? Considering the amount of cargo carried by Panagra or likely to be carried by Panagra against the total amount carried on these routes and the amount carried by Grace Line, could the exercise by Grace Line of some leverage with respect to Panagra's operations possibly enhance its competitive position?

Conversely, would Panagra's position in the passenger market be significantly enhanced by giving it the power to restrain competition for the very few passengers carried by Grace Line?

It is evident that an affiliation between Grace Line and Panagra cannot significantly enhance the position of either of them in these markets. Any joint action to increase rates would merely result in a benefit to the competing services.

The above comparisons have not yet taken into account the competition offered by Braniff. Although the Government states that in recent years Panagra has carried from 79 to 86 per cent of the United States-flag traffic between the United States and western South America (Brief, pp. 5-6), this is not the fact. When adjustments are made to those figures to eliminate the bias introduced by the Government's techniques, the figures are significantly altered. They show that Panagra (either alone or with other air lines) carried in 1957 64.4% of the passengers who traveled by United States-flag air lines between the United States and western South America (WRG-167, R. 5235-39).* Moreover, these figures can only be read against the background which explains in part why Panagra carries more passen-

* The necessity for the adjustments made is explained in the exhibit cited.

gers than Braniff. Among the factors responsible, aside from the fact that Panagra has been in the market much longer, are the more frequent service offered by Panagra and the shorter elapsed time of its flights (WRG-168, R. 5241).

It is apparent that, even on the assumptions most favorable to the Government's case, a Grace-Panagra affiliation cannot possibly result in an unreasonable restraint of trade.

4. No Congressional or administrative policy supports the Government's argument.

The Government seeks to buttress its argument that it is *per se* illegal for one carrier to secure control of a competing carrier by referring to decisions under several regulatory statutes (Brief, pp. 56, 58).

These administrative rulings fail to prove the Government's point for two reasons.

First, statutes of this kind can hardly be relied upon when the statute specifically regulating Grace's relationship with Panagra sanctions the continued existence of that relationship. In enacting Section 408(a) of the Civil Aeronautics Act, which governs mergers and acquisitions as between air carriers and other common carriers, the Congress chose to make that provision prospective only in its operation. The Civil Aeronautics Board so held in *Boston and Maine and Maine Central Railroads, Control—North East Air Lines, Inc.*, 4 C. A. B. 379 (1943). More recently, in *National Air Freight Forwarding Corp.* v. *Civil Aeronautics Board*, 197 F. 2d 384 (D. C. Cir. 1952), the court specifically held that:

> "The Board was correct in its view that Section 408 has no effect where a control relationship in existence when the Civil Aeronautics Act was passed has continued unchanged" (197 F. 2d at 389).

The reasoning which no doubt motivated Congress in not making Section 408 applicable to preexisting relationships was stated by Senator McCarran, the sponsor of the bill which was ultimately enacted as the Civil Aeronautics Act, when he commented on the purpose of the "grandfather clause" as follows:

> "It has always been the policy of Congress to give due regard to those who pioneered the respective routes" (83 Cong. Rec. 6768, 75th Cong., 3d Sess., May 12, 1938).

See also 83 Cong. Rec. 6848, 75th Cong., 3d Sess., May 13, 1938.

In the light of the fact that the applicable statute permits the continuance of the relationship between Grace and Panagra, it is anomalous for the Government to seek to deduce from this very statute, and from other similar statutes, a policy condemning the relationship which Congress specifically approved.

The second deficiency in the Government's argument is that the regulatory statutes, and the administrative and judicial rulings under them, do not embody a policy to the effect that common control of parallel carriers always has an adverse effect on the public interest. Indeed while a number of statutes give particular administrative agencies authority to regulate such relationships, those relationships have frequently been approved.* The over-simplification

* In *American President Lines, Ltd.*, 7 C. A. B. 799 (1947), upon which the Government particularly relies (Brief, p. 59), the specific ruling of the Board was that when a steamship company applies for a certificate of convenience and necessity authorizing it to render an air transportation service, it is not required to make a showing that it can "use aircraft to public advantage in its operation," a showing which is required when a steamship company seeks to *acquire* an air line (Civil Aeronautics Act, Section 408(b)). The Board held that it had discretion to determine whether, in the particular case, it was in the public interest

involved in the Government's approach is made evident in a recent careful analysis of the policy of the Civil Aeronautics Board with respect to air carrier-surface carrier affiliation. *Note, Restrictions on Entry of Surface Carriers Seeking to Fly,* 71 Yale L. J. 1529 (1962). The author concludes that "the fear that an entrant [into air transportation] with substantial investment in surface facilities will fail to promote air service seems chimerical" and that "a presumption against granting surface carriers authority to engage in air operations is unwarranted" (71 Yale L. J. at 1550, 1551).

The Civil Aeronautics Board has sometimes approved an affiliation between parallel transportation services. Thus, in the *Great Lakes Area* case, 8 C. A. B. 360 (1947), the Board granted an application by the Yellow Cab Company of Cleveland to operate a helicopter shuttle service from the Cleveland airport over routes paralleling its cab and limousine service; and in *TACA, S. A., Foreign Air Carrier Permit,* 10 C. A. B. 130 (1949), the Board renewed TACA's foreign air carrier permit despite the fact that it was controlled by Waterman Steamship Corporation. In the *Air Freight Forwarder* case, 9 C. A. B. 473 (1948), the Board found that the continued operation of an air express service by Railway Express was in the public interest, saying:

> "Some apprehension was expressed that the railroad ownership of REA may have an adverse effect on the development of the air express potential and may be inconsistent with the public interest. However,

for the surface carrier to enter into air transportation. In *Additional Service to Latin America,* 6 C. A. B. 857 (1946), upon which the Government also relies, the Board specifically noted that it was called upon "to make a choice among several applicants, including surface carriers and air carriers. . ." (6 C. A. B. at 902). Under the circumstances of that case it preferred one of the air carrier applicants.

> there is nothing in the record to indicate that the railroads through their ownership of all of REA's stock and control of its directorate have inhibited or restricted the air express operations to date . . . . it has actively and consistently encouraged the solicitation and development of air express . . . . no tangible evidence has been adduced which would support apprehensions as to the future" (9 C. A. B. at 485).

The Board's ruling in that case was affirmed in *National Air Freight Forwarding Corp.* v. *Civil Aeronautics Board*, 197 F. 2d 384 (D. C. Cir. 1952), cited by the Government at page 57, note 20, of its brief.

Similar results have been reached under other statutes. For example, under the Panama Canal Act of 1912, which regulated railroad acquisitions of competing common carriers by water, and authorized the continuance of existing services only if they would "neither exclude, prevent or reduce competition on the route by water," the Interstate Commerce Commission in a number of cases determined that specific railroad-water carrier affiliations would not restrain competition. *E.g., Steamer Lines on Long Island Sound*, 50 I. C. C. 634 (1918); 183 I. C. C. 323 (1932); *Southern Pacific Company's Ownership of Atlantic Steamship Lines*, 77 I. C. C. 124 (1923).

In *Rock Island Motor Transport Company, Common Carrier Application*, 63 M. C. C. 91 (1954), the Interstate Commerce Commission authorized a motor carrier affiliated with a railroad to conduct unrestricted motor carrier operations paralleling the railroad's line. The Commission examined the applicant's previous operations under a more restricted certificate and concluded that those operations had never been hampered or adversely affected by the railroad affiliation. The Commission noted that:

> "Applicant's operations had been conducted in the same manner as other motor carriers operating in

> the same area . . . . the operations of applicant have not unduly restrained competition, and there is no evidence that its proposed operations would produce such a result" (63 M. C. C. at 105-06).

This Court affirmed the Commission's order in *American Trucking Association, Inc.* v. *United States*, 355 U. S. 141 (1957).

It is quite clear that there is neither an administrative nor a legislative policy which broadly condemns affiliation of parallel carrier operations as adverse to the public interest or unlawful. In any event, the issue is not what proper policy should be in the enactment and administration of regulatory statutes but rather whether a violation of the Sherman Act has been shown in this case.

5. There is no evidence of actual restraint.

In view of the Government's contention that the relationship between Grace and Panagra unreasonably restrains competition, and in view of the further fact that this affiliation has existed for more than 30 years, one would expect the Government's brief to be replete with evidence of the adverse consequences of the affiliation and the restraints imposed by Grace upon Panagra's effective development.

A review of the brief, however, reveals a complete absence of any such showing. The only hint of anything along these lines is the Government's statement in its summary of argument that Grace's "control has been used to hold up Panagra's rates in order to lessen competition with Grace" (Brief, pp. 22-23). Surprisingly enough, however, the Government does not return to this point elsewhere in its brief and, in developing its argument, cites no evidence whatever in the record to show that Grace did anything to "hold up" Panagra's rates.

Consideration of the economic situation and the context of Governmental regulation indicates that any such action on Grace's part would be impossible. Panagra is a member of the International Air Transport Association (IATA). The Traffic Conferences of IATA fix rates to which the members must adhere. All IATA agreements fixing rates which affect transportation to or from the United States must be filed with the Civil Aeronautics Board and approved under Section 412 of the Civil Aeronautics Act. Thus the Board exercises effective control over international air tariffs. Indeed, it issues letters of instruction to IATA members to guide them in attending IATA Traffic Conferences. An example of such a letter appears in the record (WRG-168, R. 5177). Moreover, even if Grace had the power and inclination to hold Panagra's rates at an artificially high level, the effect would be merely to cause Panagra to lose business to the many competing foreign carriers, some of which are not members of IATA and engage in rate-cutting practices (WRG-168, R. 5258-77).

The Government's argument that Grace's affiliation with Panagra restrains competition and its statement, for example, that "If Panagra began to develop air transportation for either passengers or freight so vigorously as to injure Grace's steamship interests, Grace's nominees on the Board of Directors could retard its activities," are difficult to reconcile with the Government's later emphasis on the vigor with which Panagra's air freight traffic has been developed. The Government says, for example, that "Panagra's role as a cargo carrier has become increasingly significant" (Brief, p. 53), and notes that its freight business doubled between 1951 and 1957 and again by 1961 (*Ibid.*). Apparently the Grace affiliation has not completely stultified Panagra's progress. Braniff, which was not burdened with the disadvantage of a water-carrier

affiliation, saw its freight ton-miles of cargo drop from 948,090 in 1950 to 871,695 in 1957, while Panagra's freight ton-miles increased from 1,815,688 to 4,533,261 (WRG-168, R. 5229).

It is also interesting to note that, while the air carriers had been able by 1958 to secure 93% of the passenger traffic to Peru (WRG-168, R. 5200), 86% of the traffic to Chile (WRG-168, R. 5201), 89.9% of the traffic to Ecuador (WRG-168 R. 5199), and 95.8% of the traffic to Colombia in spite of the affiliation between Panagra and Grace, between the United States and Argentina, where no similar affiliation exists, the air carriers had been able to secure only 66.7% of the passenger market (WRG-168, R. 5202). It is evident that neither Panagra nor the air carriers generally have been injured by the Panagra-Grace affiliation.

Rather than evidencing any restraint by Grace upon Panagra over the last 30 years, the record strongly supports Judge Murphy's findings that:

> "Grace has been the only one of Panagra's two partners that has persistently, continuously attempted to improve its service and extend its routes to the United States" (R. 5429),

and that:

> "the record before us fails to disclose any antitrust violation on the part of Grace vis-a-vis Panagra" (R 5392).

If Grace had desired to limit Panagra's development or to diminish its effectiveness along the routes it serves, it could easily have done so merely by allowing Pan American to have its way. The history of its persistent struggle on Panagra's behalf cannot be reconciled with the Government's contention that Grace's affiliation with Panagra either has restrained, or will restrain, Panagra's development.

Conclusion.

The argument directed by the Government against Grace's participation in the creation and development of Panagra and its present one-half ownership of that enterprise does not rest on any showing that Grace has ever restrained the development of Panagra or has imposed any other restraint on competition. On the contrary, the District Court, in findings which the Government cannot challenge, determined that no such restraint exists, or ever has existed.

The Government's argument is based rather upon, on the one hand, the abstract condemnation of Grace's participation in Panagra's formation because, in the Government's view, such participation might have or could have resulted in restraint, and, on the other hand, a sterile analysis of sea and air transportation on the routes here involved which hypothesizes a competition which the facts belie and which postulates a possibility of restraints which have never occurred.

Grace submits that its part in the creation and subsequent growth of Panagra was the lawful and proper extension of its business into the utilization of a new technique. Its participation in Panagra was a participation in the creation of something new, but something related to interests it already had. By dint of much effort, and in cooperation with the Government, Grace has built the enterprise into something of value both to itself and to this country. In the course of that effort Grace has consistently, and at considerable cost in effort and resources, fought to free the enterprise from shackles which Pan American has ever sought to impose.

We submit that, under these circumstances, the Government cannot properly condemn Grace's interest in Panagra as inherently and *per se* unlawful.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

v.

UNITED STATES OF AMERICA,
Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT PAN AMERICAN WORLD AIRWAYS, INC.

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Of Counsel:
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Edward A. Woolley,
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(F) "Person" shall mean any individual, partnership, association, corporation, or other legal entity.

(G) "Braniff" shall mean Braniff Airways, Inc., a corporation organized and existing under the laws of the State of Oklahoma, with its principal office at Dallas, Texas.

(H) "Board" shall mean the Civil Aeronautics Board or any other agency of the Government discharging substantially the same functions.

(I) "Control" shall mean either control or the power to control, affirmatively or negatively, in the light of all the circumstances, including the ownership of stock other than that held by or for the person whose control is in issue.

(J) "Carrier" shall mean an American-flag airline duly approved and certificated by the Board and the President.

III.

The provisions of this Final Judgment applicable to Pan American shall apply to such defendant, its subsidiaries, officers, directors, agents, servants, employees, successors and assigns, and to those persons in active concert with it who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

(A) Pan American is ordered and directed to divest itself of all its interest in Panagra (whether by sale of stock, assets or otherwise) and to take such action as may be necessary and appropriate to achieve the result of there being a carrier, comprised of or controlled by Braniff through stock ownership (owning more than 50% of the outstanding stock entitled to vote) and not controlled by Grace, and holding Braniff's and Panagra's international certificates, with the approval of the Board and the President, provided that Pan American receives for its interest

in Panagra so divested a fair and reasonable price to be fixed by agreement between the parties, or, if no agreement is reached, by the Board or if the Board declines to fix such price then by the Court or by three arbitrators appointed by the Court and such carrier is precluded from using any name or insignia having reference to or leading to confusion with Pan American.

(B) Pan American is enjoined and restrained after the divestiture required by subsection (A) hereof from retaining any interest in Panagra, Braniff or the carrier, and from acquiring or holding directly or indirectly any interest in any of the said companies in the future.

(C) In the event that any person in which Pan American has or acquires any stock interest, should have or in the future acquires any voting interest in Panagra, Braniff or the carrier, Pan American shall within a reasonable time divest itself of its interest in such person unless this Court shall approve Pan American's retention of its stock interest therein upon a finding that such interest does not afford Pan American the opportunity to influence the affairs of Panagra, Braniff or the carrier.

(D) Within ten days after Pan American's divestiture as required by subsection (A) hereof, Pan American shall cause any of its officers, directors or employees who are officers, directors or employees of Panagra to resign from such positions in Panagra. Thereafter, Pan American shall be enjoined from causing, authorizing or knowingly permitting any of its officers, directors or employees to serve as officer, director or employee of Panagra, Braniff or the carrier.

V.

In the event that it shall not prove feasible to achieve the result stated in subsection (A) of Section IV by July 31, 1961 (or such later date or dates as the plaintiff may approve) a supplementary final judgment may be entered against Pan American:

(A) Containing such relief as the Court may determine after a hearing (which may be simultaneous with the hearing with respect to Grace), to which Pan American shall be a party with the right to adduce evidence, if a Final Judgment by consent shall have been entered against Grace providing (1) for Grace's participation in the plan set forth in paragraph (A) of Section IV on a basis satisfactory to the plaintiff (including provisions with respect to price similar to those stated in paragraph (A) of Section IV), and (2) that if it shall not prove feasible to carry out the said plan prior to July 31, 1961 (or such later date or dates as the Department may approve) a supplementary final judgment may be entered against Grace containing such relief as the Court may determine after a hearing, to which Grace shall be a party with the right to adduce evidence; or

(B) Requiring Pan American to take such action regarding Pan American's stock interest in Panagra without regard to the fact that such stock interest was acquired prior to the effective date of the Civil Aeronautics Act of 1938, as the Board and the President shall determine to be appropriate to establish a sound route pattern between the United States and South America, if a final judgment by consent shall have been entered against Grace providing (1) for Grace's participation in the plan set forth in paragraph (A) of Section IV on a basis satisfactory to plaintiff (including provisions with respect to price similar to those stated in paragraph (A) of Section IV), and (2) that if it shall not prove feasible to carry out the said plan prior to July 31, 1961 (or such later date or dates as the Department may approve), Grace will also agree to be bound by a determination of the Board and the President concerning the action to be taken by Grace regarding Grace's stock interest in Panagra without regard to the fact that such stock interest was acquired prior to the effective date of the Civil Aeronautics Act of 1938, deemed appropriate to the end above described; or

(C) Containing such relief as the Court may determine after a hearing to which Pan American shall be a party with the right to adduce evidence, if the Court shall have made an adjudication that Grace has violated the antitrust laws as charged in the complaint. Such a final judgment against Pan American shall become effective only when such judgment as shall be entered against Grace shall not be subject to further appeal. In the event that there is a finding of liability on the part of Grace, Pan American shall not be entitled to be heard with respect to relief against Grace but shall only be entitled to be heard with respect to the relief against it after the final judgment against Grace shall not be subject to further appeal.

VI.

To ensure reasonable opportunity for effectuation of either of the alternative plans described in Sections IV and V, herein, Pan American shall not dispose of any or all of its stock in Panagra, without the prior consent of the United States, before July 31, 1961; provided however, that this section shall not prevent Pan American from using its stock in Panagra as security for any borrowings.

VII.

(A) If the Government shall have prosecuted the complaint herein against Grace and it shall be finally determined, after all available appellate procedures have been exhausted, that Grace has not violated the antitrust laws, the provisions of this final judgment shall not, in any manner, operate as a bar or estoppel or in any other manner constitute a defense against any suit or proceeding which the United States may institute alleging that the consenting defendant is violating Sections 1, 2, or 3 of the Sherman Act (15 U. S. C. §§ 1, 2, 3) or any of them, regardless of whether the acts alleged to constitute such violation or

Proposed Consent Decree.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, Plaintiff, v. PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE AND COMPANY, AND PAN AMERICAN-GRACE AIRWAYS, INC., Defendants.	Civil Action. No. 90-259

Final Judgment.

Plaintiff, United States of America, having filed its complaint on January 11, 1954; defendant, Pan American World Airways, Inc., having appeared herein and having filed its answer to the complaint denying the substantive allegations thereof relating to it; and plaintiff and Pan American by their respective attorneys having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by either party with respect to any such issue;

NOW, THEREFORE, before any testimony has been taken, and without trial or adjudication of any issue of fact or law or admission in respect of any such issue and upon consent as aforesaid of plaintiff and Pan American,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein, and of the parties signatory hereto. The complaint states claims for relief against Consenting Defendant under Sections 1, 2 and 3 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "Pan American" shall mean defendant Pan American World Airways, Inc., the Consenting Defendant, a corporation organized under the laws of the State of New York, with its principal office at New York, New York.

(B) "Panagra" shall mean defendant Pan American-Grace Airways, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal office at New York, New York.

(C) "Grace" shall mean defendant W. R. Grace and Company, a corporation organized and existing under the laws of the State of Connecticut, with its principal office at New York, New York.

(D) "South America" shall mean the land area comprising the Continent of South America, and in particular the countries of Venezuela, Colombia, Ecuador, Peru, Chile, Bolivia, Uruguay, Paraguay, Argentina, Brazil and the Guianas.

(E) "Subsidiary" shall mean a corporation more than 50% of whose stock entitled to vote upon election of directors (other than preferred stock so entitled to vote upon the failure of the corporation to pay certain dividends) is owned, or directly or indirectly controlled, by another corporation.

violations occurred before or after the date of entry of this final judgment.

(B) In any such suit or proceeding instituted by the United States, the United States shall not, by virtue of this final judgment, be required to show or establish any change in material circumstances occurring subsequent to the date of the entry of this final judgment, nor, in any manner, be barred or estopped, by virtue of any of the provisions of this final judgment, from introducing any testimony or evidence relating to any of the aforesaid acts, whether occurring before or after the date of this final judgment.

(C) Nothing in this Section VII shall prevent Pan American from contending in any such suit or proceeding that the finding of non-liability on the part of Grace referred to in paragraph (A) would preclude a finding of liability on the part of Pan American or the Government from controverting any such contention on the facts or the law.

VIII.

Within three months after the divestiture required by Section IV, there shall be terminated: (1) any and all agreements whereby Pan American or any company in which it has an interest acts as general sales agent for Panagra, or by which Panagra acts as general sales agent for Pan American; (2) any and all agreements by which Pan American renders purchasing, shipping or other management services for Panagra; and (3) any and all arrangements between Pan American and Panagra for the interchange, maintenance and overhaul of flight equipment or the training of personnel; provided, however, (a) that the foregoing shall not prevent the existence as between Pan American and Panagra of such interline traffic and sales agreements or joint facility arrangements, approved or to be approved by the Civil Aeronautics Board, as are commonly entered into by competing airlines; (b) that the termination of such contracts shall not affect the rights or obligations of the parties with respect to transactions previously initiated

thereunder; and (c) that the three months' period for termination may be extended for a further period not to exceed another three months as to any particular contract or contracts if agreed with the approval of the Department.

IX.

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on notice to Pan American, reasonable as to time and subject matter, made to Pan American at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of Pan American, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Pan American relating to any of the matters contained in this Final Judgment, and during the times that the plaintiff shall desire such access, counsel for Pan American may be present, and (2) subject to the reasonable convenience of Consenting Defendant and without restraint or interference from it, be permitted to interview its officers or employees regarding such matters, at which interviews counsel for the officer or employee interviewed and counsel for the Consenting Defendant may be present.

Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, Pan American shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Judgment. Information obtained pursuant to the provisions of this Section shall not be divulged by any representative of the Department to any person other than a duly authorized representative of the Department, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

X.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment and no others to apply to this Court at any time for such orders or direction as may be necessary or appropriate for the construction, modification, or carrying out of this Final Judgment and for the enforcement of compliance therewith and for the punishment of violations thereof, or for other and further relief.

XI.

The making and entry of this decree shall be without prejudice to any rights of Grace or Panagra in any trial of this case against either or both of them and without prejudice to the rights of Grace or Panagra as to relief.

Dated:

United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment.

For the Plaintiff:

.....	.....
Assistant Attorney General	
.....	.....
.....	.....
Attorneys, Department of Justice	Attorneys, Department of Justice

For the Defendant:

Pan American World Airways, Inc.

.....

REPLY BRIEF FOR APPELLANT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

v.

UNITED STATES OF AMERICA,
Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT PAN AMERICAN WORLD AIRWAYS, INC.

I

The Government makes no substantial attempt to sustain the district court finding of a Section 2 violation by Pan American after the district court found no Sections 1 and 3 violation by Pan American and Grace.

The Government makes no real attempt to sustain the district court's finding of a unilateral violation of the antitrust laws on the part of Pan American or the district court's decree of divestiture against Pan American alone,

although the Government states (p. 8) that, assuming that its "basic argument may be wrong," the district court was correct in holding that Pan American violated Section 2 of the Sherman Act:

It is plain from reading the briefs of the Government as appellant in No. 47 and as respondent in No. 23 that its claim now, as in its complaint, is only a claim of *combination* on the part of Pan American and Grace to restrain and monopolize trade through their *joint organization and ownership of Panagra*, and that the remedy sought is divestiture of the two owners and not of Pan American alone. As there was no claim in the complaint (R. 1-12), there is no claim now that Pan American committed some unilateral violation of the antitrust laws, or that by reason of anything which it did alone and independently it alone should be divested of its ownership of a half interest in Panagra.

There is no denial of what we said at the beginning of Point II of our appellant's brief, that "The district court's first error was to decide a case which was not brought" and that its "final error was to enter a decree * * * which runs directly contrary to national policy in air transportation as declared by the agency of government vested with the responsibility of formulating and effectuating that policy."

The reality is restated in the "Introduction And Summary" of the Government's brief (p. 7): "The government's basic contention in this case is that the arrangements between Pan American and Grace, resulting in the formation of Panagra, constitute, in both their inception and subsequent operation, a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act," and the action of Pan American with respect to Panagra's

extension to the United States, which was the sole basis of the district court's finding against Pan American, "supported in part" the "illegality of the combination" alleged.

Similarly, in the last point of its brief (p. 47), where the Government seeks to support a decree of divestiture, it is under a heading "Divestiture of Both Pan American and Grace's Interest in Panagra is the Proper Remedy in This Case." And here (p. 48), as elsewhere, it is acknowledged that the violation on the part of Pan American found by the district court was only, as we observed in our appellant's brief, in Pan American's exercise of the "normal incidents of ownership" of its Panagra stock, or, as the Government itself expresses it (p. 49), "merely a consequence of Pan American's role as the holder of a 50 percent interest in Panagra."

While thus repeating as respondent its basic contention as appellant, *there is no attempt on the Government's part to meet the basic contention of Pan American as appellant* that a joint venturer in a venture which has been held to be legal and in which his ownership has been held to be legal may not be held to have violated the antitrust laws by exercising the normal incidents of ownership in voting against an extension of the venture to place it in competition with his own business.

In sum, the Government is necessarily in agreement with the fundamentals stated in our appellant's brief, that "The test of legality must be legality of the venture and ownership. If the venture and ownership do not offend against the antitrust laws, the exercise of the normal incidents of ownership cannot offend."

We submit that we do not have to argue further as appellant. The district court decision cannot stand because it is a contradiction within itself. There can be

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only one of two results in this case, not a third result such as the district court reached. The complaint must either be sustained as to both defendants or dismissed as to both defendants (unless sustained against Grace alone on the ground of the illegality of its ownership of stock in an airline in competition with its steamship line). There was either a combination in restraint of trade in the formation and joint ownership of Panagra by both Pan American and Grace, as alleged by the Government, or there is no basis for the decision against Pan American. When the district court found, properly we maintain, that the joint ownership and arrangements were legal (Opinion, R. 5389-392), including the "understanding that Pan American and Panagra were not to parallel each other's routes" (Opinion, R. 5390) and including the "method of organization of the joint company" by Pan American and Grace which was calculated to insure against expansion of the company "in competition with their respective independent lines" (Opinion, R. 5389), the court was as much obliged to dismiss the complaint against Pan American as against Grace.

The District Court Decision is Not Sustainable Upon the Suggested Ground that Pan American is Dominant on the Canal Zone-United States Segment and Maintained its Dominance by Excluding Panagra

Having observed that the Government as respondent has wholly failed to meet our appellant's case, we shall in reply comment only briefly on the Government's arguments which miss the point.

The holding against Pan American was, as stated by the Government (p. 8), "based upon findings that Pan American has been since 1928 the dominant air carrier on the Canal Zone-United States segment of the commerce

with South America; that by using its 50 percent stock ownership in Panagra, Pan American prevented Panagra from entering that segment of commerce; that Pan American thereby maintained its dominance not only over air transportation between the United States and the Canal Zone, but also between the United States and South America as a whole; and that Pan American thus monopolized or attempted to monopolize this commerce in violation of Section 2 of the Sherman Act."

It is thus clear that the entire holding against Pan American is based upon two findings: (1) that Pan American is "dominant" on the Canal Zone-United States segment, and (2) that its "dominance" was maintained by preventing Panagra from entering that segment.

Neither finding is sustained or sustainable, for there is *absolutely no evidence* to support a finding or permit an argument that Pan American is dominant on the Canal Zone-United States segment or that its "prevention" of Panagra's entering that segment gave Pan American anything approaching a monopoly.

There is no Basis for a Finding or Argument that Pan American is Dominant on the United States-Canal Zone Segment

The reason that we can and do make such a categorical statement on the subject is that the entirety of the evidence on the subject can be stated in one sentence. *The totality of the evidence as to competition on the United States-Canal Zone segment is the single significant fact that eight airlines compete for the traffic.*

The Government acknowledges (p. 15) this fact and that "no evidence was introduced * * * as to the division of traffic among these carriers."

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We submit that the Government's statement with respect to the evidence must be taken as an acknowledgment of the insufficiency of the evidence to support a finding of "dominance" by Pan American on this route.

The reason for the lack of further evidence on the subject is as significant as the absence of evidence itself. The subject of competition on the route was never explored in the district court because there was no claim or suggestion either in the complaint or at the trial that Pan American was dominant on the route.

Of equal significance is the basis upon which the trial court reached its key finding as to Pan American's "monopoly" on the United States-Canal Zone sector. As pointed out in our appellant's brief (p. 47), the district court's finding was not based upon any factual showing or consideration of the facts but upon the mistaken legal premise that transportation on this sector is "overseas" transportation rather than "foreign" transportation and "as such would be reserved exclusively to United States flag carriers" (Opinion, R. 5407). The district court thus either had no realization of the fact or ignored the fact, which was completely destructive of its key finding, that eight airlines competed for the traffic and that it could not possibly be said that Pan American had monopolized transportation on that sector by not cooperating with Grace in an application by Panagra to be added to the competitors on that sector.

The Government now feebly suggests an argument (p. 15), without any facts in the record, that, assuming that all eight carriers on the United States-Canal Zone route shared equally in the traffic, then in some way not indicated monopoly would arise from such diffusion. The argument is not sustainable as an intellectual exercise,

which is all that it is, and it is certainly not sustainable without factual support.

Nor is the deficiency overcome with the suggestion that the competition of foreign airlines should be ignored or minimized by a rationalization about "the part which national loyalties may be expected to play in the routing of traffic" (p. 16). The facts of foreign airline competition, including the fact that Americans in large proportions use foreign airlines, are stated in our appellant's brief (p. 40). Indeed, the Government concedes (p. 16) that we have correctly observed that "the foreign carriers' market share is increasing." The Government's speculation (p. 17) that foreign penetration of the market may be a "temporary condition" is refuted by the source of its speculation, *United States-South American Route Case*, CAB Dkt. No. 12895, Order No. E-17289, August 8, 1961. In that case the CAB emphasized the increasing growth and influence of foreign carrier services which "dilute the potential economic support for the services of the United States carriers" and "bring into question the need for point to point duplication of such services." The report appended to that Order shows that both the proportion of all passengers using foreign flag airlines and the proportion of U. S. citizens using foreign flag airlines continue to increase (compare D. Ex. PS-113, R. 4583 and PS-112, R. 4582 with Appendix 8 to *Report on Proposed South American Route Patterns*, appended to CAB Order No. G-17289, *supra*).

The fact thus emerges clearly, as demonstrated in our appellant's brief (pp. 37-42), considering all the com-

* The hypothetical market figures in *Times-Picayune v. U. S.*, 345 U. S. 594, 612 (1953), referred to by the Government, were not used to hypothesize dominance, but on the contrary were used only as a comparison with the actual market figure to show that the actual figure was not of a magnitude to constitute dominance.

petition which must be considered, that Pan American is not "dominant" in air traffic between the United States and South America, and it cannot even be argued, in support of the essential premise which underlies the district court's finding against Pan American and the Government's attempt to sustain the district court's decision, that Pan American had any dominant position in the United States-Canal Zone segment.

There is no Basis for a Finding or Argument that Pan American Maintained its Dominance on the United States-Canal Zone Segment by Excluding Panagra

As there is no support whatever for any attempted argument that Pan American is dominant on the United States-Canal Zone sector, *a fortiori* it cannot be said that Pan American maintained its dominance by excluding Panagra, a single "potential competitor," from that sector.

After the destruction of the major premise of "dominance," we comment on the argument addressed to the minor premise of the maintenance of dominance through the exclusion of Panagra only to make doubly clear that it falls, as of necessity, with the collapse of the major premise.

The Government argues (pp. 11-12) that there was here an "exercise of monopoly power," being the "power to exclude competitors," in that "Pan American, by combining with Grace, acquired the power, which it has continuously exercised, to exclude the direct competition of Panagra, the company which could best provide an effective challenge to Pan American, from a crucial segment of the South American trade."

Analysis of the argument reveals that each and every one of the ingredients from which it purports to be compounded is lacking:

(1) The "power to exclude competitors" is non-existent. It has not been claimed; it could not be claimed that Pan American has had any power to exclude "competitors" anywhere. The only claim of exclusion is of a single "potential competitor" on the United States-Canal Zone sector.

(2) It cannot be said that Pan American "acquired" the power attributed to it. The words "acquired" and "acquisition" are of meaningful import in antitrust concepts and cases. Pan American "acquired" nothing in relation to Panagra. It "created" Panagra, and whatever "power" it may have with respect to Panagra stems entirely from its creation of Panagra as a pioneering venture in a new field.

(3) The "power to exclude" Panagra did not exist and was not "exercised." The "power" did not exist because it was dependent upon the "legality" of Pan American's action on the subject of Panagra's extension as determined by the CAB. *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946) (see our appellant's brief, pp. 42-44).*

* The Government avoids rather than meets the argument that Pan American did not have the power to exclude Panagra from the United States-Canal Zone run because of the authority existing in the CAB, under the decision of the Court of Appeals for the Second Circuit, to grant an application by Grace for an extension of Panagra to the United States if it was shown that Pan American's opposition to such an extension was the result of "illegality and fraud." The Government argues (p. 20) that the Court of Appeals' decision can be disregarded because Pan American "in fact" excluded Panagra from the route and the litigation involved in the Court of Appeals' decision ended in an "inconclusive manner." We reply that the point is that Pan American did not have the power of excluding Panagra except if it was legally entitled to do so; that it in fact did not do so; that there

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There was no exclusion of Panagra from the United States-Canal Zone segment. On the contrary, Pan American has advocated, from the beginning of the possibility of through-flights, the flying of Panagra planes over Pan American's Canal Zone-United States route, so that when Grace finally agreed to the Pan American proposal, Panagra entered upon that segment under agreements approved by the CAB.**

(4) Panagra could not be considered a company which could "best provide" competition for Pan American on the United States-Canal Zone segment or be contemplated as a "potential competitor" of Pan American at all. As the Government places considerable stress on what might be "expected" from Panagra as "competition" for Pan American, saying (p. 14) that "Panagra would normally be expected to be Pan American's strongest competition between the United States and the Canal Zone," we pause to point out why, in the nature of the organization of Panagra, there could be no such expectation or contemplation.

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was nothing inconclusive about the Court of Appeals' decision after the appeal was dismissed. Further, the whole subject of Panagra's coming to the United States was concluded by the settlement of the issue in the through-flight arrangements approved by the CAB.

** We need not argue the Government's suggestion (pp. 9-10) that a route of Panagra's own would be preferable for Panagra to the through flight arrangements in that "it would increase its ability to attract passengers to South America." There is no citation of the record or evidence in support of the suggestion. We can think of no reason why any passenger flying from the United States down the west coast of South America would patronize Panagra if it had the route for itself but would not patronize Panagra on a through-flight service over the combined routes of Pan American and Panagra (See testimony in CAB Docket 779 of H. J. Roig of Panagra and Grace. D. Ex. P-412, R. 3715, 3733).

Panagra Would Not be Expected to be Pan American's Competitor

It is a primary fact in this case that Panagra was designed and formed to be a connecting and complementary, not competing, carrier with Pan American (see our appellant's brief, pp. 17 *et seq.*). The Pan American and Panagra services between the United States and the west coast of South America were set up as connecting and complementary services, with Pan American rendering the service between the United States and the Canal Zone and Panagra rendering the service between the Canal Zone and the west coast of South America.

The carriers' roles in relation to each other were fixed in the beginning. Indeed, that fact is the premise of the Government's claim of an illegal combination. It is not denied or questioned by the Government, indeed the Government evidence made it clear, that Grace's only interest in participating in an airline at the time Panagra was formed was in an airline which would run from the Canal Zone down the west coast of South America. Equally clear it is that Pan American's only interest in joining with Grace in an airline was one that would run from the Canal Zone down the west coast of South America (see e.g. Opinion, R. 5376, 5388-389). Pan American had already established its route from the United States to the Canal Zone which was the predicate of the Panagra undertaking, in which Pan American agreed to take Grace as a partner instead of going it alone as it would otherwise have done. Panagra was thus, as the CAB termed it, "part of the Pan American system." It could never have been conceived by anyone that the time would come that Panagra would be expected to become a competitor of Pan American on the route between the United States and the Canal Zone, with the

sary to establish that Pan American has "a substantial monopoly" in the area or that the elimination of an additional potential competitor would maintain a monopoly.

What we have said as to the failure to introduce any evidence on the subject of "dominance" of Pan American on the United States-Canal Zone segment, and the reason therefor, bears restatement in connection with the academic discussion in the Government's brief of circumstances under which the elimination of a single competitor could be held to be monopolization. Neither when this action was instituted or tried was the idea advanced that Pan American had monopolized or attempted to monopolize commerce between the United States and the Canal Zone by preventing Panagra from extending its route from the Canal Zone to the United States.

There is no Support for the Suggestion of "Attempted Monopolization" on Pan American's Part

Finally, the argument (pp. 22-25) is not sustainable that, if the decision of the district court cannot be upheld on its finding of monopolization on Pan American's part, it may be upheld on the ground of "attempted monopolization." (p. 23) There is here no satisfaction of the evidentiary requirements for a finding of attempted monopolization.

The Government recognizes (p. 23) that the two essential elements of an attempt to monopolize are (1) "a specific intent" to monopolize and (2) a "dangerous probability" of monopolization resulting from the acts of the defendant. The Government does not suggest that the district court made any finding on either of these essential elements of a case of attempted monopolization. The opinion of the district court gives no indication of thought about these requirements.

The Government claims no more in this connection than that Pan American voted its stock interest in Panagra as it was entitled to do. Its vote against an application for an extension of Panagra's route to the United States is recognized as being nothing more than an exercise of the normal incidents of its stock ownership in Panagra. Such a normal exercise of a stockholder's rights cannot be considered a plan or scheme to monopolize. Nor does the opinion of the district court suggest any such scheme on Pan American's part, but finds only that Pan American mistakenly regarded Panagra as a subsidiary and that the voting of its stock interest in Panagra was motivated by its desire to participate in the profits to be derived by Panagra's flying over Pan American's route (Opinion, R. 5405-406). Such a desire to profit from one's own franchise can hardly be condemned as an intent or attempt to monopolize.

The Government's attempt to distinguish the patent and trademark cases, holding that good faith action pursuant to an apparent legal right negates a claim of a specific intent to monopolize, is not persuasive. A CAB certificated route is comparable to a patent or trademark. A route received pursuant to a grandfather clause is even more analogous. The reason for the defense is the same in either case, that a good faith assertion of any legal right is not the equivalent of a plan or scheme to monopolize. See e.g., *Kellogg Co.* v. *National Biscuit Co.*, 71 F. 2d 662, 666 (2d Cir. 1934). If Pan American was mistaken in its judgment, we submit that the mistake cannot be blown up into a "specific intent to monopolize."

The argument of the Government on "dangerous probability" of monopolization fails for the very same reason that its argument of monopolization fails. There is no "strong likelihood," as the Government suggests, that a

effect of replacing Pan American on that route, and that Pan American should vote its half interest in Panagra for such replacement.

We must also say in this connection that we can see no reflection upon Pan American in the motive found by the district court and cited by the Government (p. 10), for its exercise of the "normal incidents of ownership" in voting against an extension of Panagra to the United States and insisting upon observance of the agreement that Pan American and Panagra would not parallel each other's routes—"in order that it may continue to share in substantially all traffic carried by Panagra and bound for the United States, or originating in the United States and bound for points on Panagra's west coast routes." That was the agreement of the parties and was inherent in the formation of Panagra. That is the reason why Pan American formed Panagra. Nor can we see that the legality or morality of the situation, as far as Pan American is concerned, would be affected by the fact, if it were a fact, that there would be some advantage to the joint venture, meaning the other joint venturer, in having Panagra take over Pan American's route between the United States and the Canal. If it were material, we would rely on the uncontradicted evidence that competition between Pan American and Panagra between the United States and the west coast of South America would be a waste of Panagra's investment as well as Pan American's investment and a waste of public funds. In any event we rely on what seems to us the incontrovertible premise that a joint venturer in what has been held to be a legal venture, and in which his ownership has been held to be legal, cannot be held to be in violation of the antitrust laws for refusing to support the proposal of his partner that the partnership take over his own business.

The Evidence Does Not Even Allow Argument that the Assumed Exclusion of Panagra from the United States-Canal Zone Segment Gave Pan American a Monopoly on that Segment

It remains only to point out and duly emphasize that even if all the the Government suggests as to the "power" to exclude Panagra and the "exclusion" of Panagra from the United States-Canal Zone sector is assumed, there is a fatal failure to make a semblance of a showing that the "exclusion" gave Pan American a "monopoly" on the route.

In the absence of any showing or claim that Pan American excluded or had the power to exclude "competitors," and with the suggestion of "monopoly" coming down to the exclusion of a single potential competitor, it would have been incumbent upon the Government, if it intended to make out a case of that kind, to make a most complete presentation of competitive conditions on the United States-Canal Zone segment, a showing which would support a claim that the exclusion of a single potential competitor would foster a monopoly. The Government would have had to prove a case coming within the holding of *Lorain Journal Co. v. United States*, 342 U. S. 143, 154 (1951), cited by the Government (p. 13) for the proposition that exclusion of a single competitor, when it is the "only substantial competitor," may constitute monopolization.*

Plainly, the presence of eight competing airlines on the United States-Canal Zone route negatives any such case, and certainly, without any other evidence on the subject of competition on the segment, the Government cannot purport to have made a factual showing of the kind neces-

* The holding of the *Lorain Journal* case (p. 154) was that "a single newspaper, already enjoying a substantial monopoly in its area, violates the 'attempt to monopolize' clause of § 2 when it uses its monopoly to destroy threatened competition."

"foreclosure of Panagra from entering under its own certificate into the United States" would result in a "dangerous probability" of monopolization, as the number of competing carriers on the route are so numerous as to make one more or less inconsequential as a monopoly factor. Concededly, the admission of as many carriers to the route as the CAB thinks desirable is within the power of the Board at all times, and the assumed power of exclusion of a single carrier attributed to Pan American, and its own subsidiary at that, cannot possibly be characterized as either monopolization or attempted monopolization.

II

The Civil Aeronautics Board's approval of the Through Flight and Parent Company agreements, an integral part of which is recognition of Pan American's right to refuse to allow Panagra to extend its route to the United States, confers antitrust immunity on Pan American's exercise of that right.

We find that the Government's argument under its Point II (pp. 25-35), addressed to the question of the grant of immunity by the CAB to Pan American on account of its refusal to allow Panagra to extend its route to the United States, in no way counters the showing we have made on this subject in Point III of our appellant's brief (pp. 61-72). In the interest of avoiding unnecessary briefing we refrain from adding anything on this subject in this reply brief, but respectfully ask the Court to refer back to our argument on the subject in Point III of our appellant's brief as our reply to the Government's argument. We respectfully

submit that the Court will find our original argument both responsive to and conclusive against the Government's argument on this point.

III

The Civil Aeronautics Board had primary jurisdiction of the subject matter of the action and the district court should not have entertained the action.

What we have said as to our appellant's brief serving as a reply to the Government's respondent's brief on its Point II applies equally to the Government's Point III on the subject of the exclusive or primary jurisdiction of the CAB (pp. 36-47). Point IV of our appellant's brief (pp. 51-60) is respectfully referred to as a full reply to the Government's argument.

We do, however, think it worthwhile to point out from the Government's own statement that it is arguing an altogether different case from the one presented in this appeal on the question of the jurisdiction of the CAB, and that its argument is in effect an admission that the case presented on this appeal and decided by the district court is one which does fall within the jurisdiction of the CAB.

The Government's argument (p. 42) is pitched to the point that the CAB does not have such a pervasive power or specialized competence in dealing with all antitrust questions relating to the airline industry as to give it primary jurisdiction to deal with the "basic issue" here of "whether the formation of Panagra, the division of control, and the concomitant agreements going back to a period antedating all administrative regulation, were in

the inception of the combination, as well as in its subsequent implementation, a combination in restraint of trade violating Sections 1 and 3 of the Sherman Act."*

We need not argue this posed proposition, which is an accurate statement of the case which the Government brought and lost and now has up on appeal in No. 47, for that is not the case on this appeal. The district court dismissed the case under Sections 1 and 3 of the Sherman Act, and the case presented on this appeal is whether, assuming that there is no Section 1 or 3 violation, Pan American can still be held to have violated Section 2 of the Act by the vote of its stock interest in Panagra against an extension of Panagra to the United States. It is that question which we say falls squarely within the primary jurisdiction of the CAB, and we find the Government

* The cases cited by the Government demonstrate that the Civil Aeronautics Act is a pervasive and comprehensive scheme of regulation. In *United States* v. *Radio Corporation of America*, 358 U. S. 334, 348-351 (1959) and *California* v. *Federal Power Commission*, 369 U. S. 482, 485-488 (1962) this Court pointed out that the standards established for the regulatory commissions in those two cases were "public interest, convenience, and necessity". The standards by which the CAB approved the Through Flight Agreement included not only a standard of "the public interest" but also of whether the transaction resulted "in creating a monopoly" (*Pan American-Panagra Agreement*, 8 CAB 50, 63 (1947)). Thus the CAB was clearly required to weigh antitrust considerations. The Federal Communications Commission in the *R.C.A.* case and the Federal Power Commission in the *California* case were not so required. Moreover, the Civil Aeronautics Act was intended by its drafters to be based upon the Interstate Commerce Act, an Act which the Government has acknowledged to be comprehensive and pervasive (G. Resp. Br. 44; *Hearings on S. 2 Before a Subcommittee of the Committee on Interstate Commerce*, U. S. Senate, 75th Cong., 1st Sess. (1937) 280, 333-40, 427-31; 83 Cong. Rec. 6726). The Government's assertion that the CAB lacks power over international rates is simply mistaken as a matter of fact. International rates are set by agreements approved by the CAB under the same section which this Court has previously ruled grants the CAB power over rates. *United States* v. *du Pont & Co.*, 351 U. S. 377, 388, n. 14 (1956).

The Government cites the case of *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439 (1945) to the effect that even a comprehensive

agreeing rather than disagreeing with us when it concedes (p. 43) that "some of the practices attacked by the government in this case might be dealt with as unfair competition under Section 411 of the Aviation Act." The Government does not specify, but clearly it means Pan American's opposition to Panagra's extension to the United States, for the only relief which it mentions (p. 43) as not being within the administrative authority of the CAB is relief from "the basic evil of the combination of Pan American and Grace as co-owners of Panagra."

As we said in our appellant's brief (p. 52), it may be that if this action had resulted either in sustaining or dismissing the complaint no harm would have been done to the CAB's jurisdiction and functioning. The

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and pervasive regulatory scheme will not oust the federal courts of jurisdiction over conspiracies and combinations which present the regulatory agency with a situation over which it has no control. The Government finds in the 1928 combination of Pan American and Grace to form Panagra an analogy to the rate fixing combination of railroads in *Georgia* v. *Pennsylvania* which presented to the ICC rates and tariffs already fixed by the railroads. The Court there held that primary jurisdiction did not apply because the ICC could not approve nor could it condemn and remedy the rate fixing conspiracy. The differences, relevant to the Government's Section 2 charge, between ICC jurisdiction in that case and CAB jurisdiction over Panagra's extension to the U. S. are made clear by the decision of *W. R. Grace* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946), *writ of cert. dismissed for mootness*, 332 U. S. 827 ('947); but there is also a decisive difference, relevant to the Sections 1 and 3 charges, from the alleged conspiracy and combination of Pan American and Grace. Pan American and Grace formed Panagra in 1928 when the government agency dealing with airlines was the Post Office. Award of an airmail contract was in those days equivalent to certification of a route by the CAB today. The combination of Pan American and Grace, far from being condemned, was expressly cited by the Post Office as the basis for granting Foreign Air Mail contract No. 9. The award of the contract was upheld by an opinion of the Attorney General. 36 Ops. Att'y Gen. 33, May 6, 1929. Moreover, in 1938 Congress confirmed this approval of Panagra's right to operate its routes in its then existing form by granting it a grandfather certificate when the CAB was established (PAA Ap. Br. 89; §401 of the Civil Aeronautics Act).

invasion of the CAB's jurisdiction by the district court here consisted not so much in its undertaking to decide the case which the Government brought, presenting the question of whether the formation of Panagra with its concomitant agreements antedating all administrative regulation was a violation of Sections 1 and 3 of the Sherman Act, but in its undertaking to decide a case which was not brought and holding that there was a unilateral violation of Section 2 of the Sherman Act on the part of Pan American in its action with respect to a Panagra application for an extension of its route to the United States. That action could certainly be dealt with as a question of "unfair competition" under Section 411 of the Aviation Act.

The Government is in error when it states (p. 43) that "this case does not concern the route pattern in South America." It would be more accurate to state that this case, as decided by the district court, is concerned with nothing but the route pattern. That the controversy relating to an application for a route for Panagra between the United States and the Canal Zone, which is the entire subject matter of the decision of the district court against Pan American, is concerned with the route pattern and is a question of "unfair competition" within the jurisdiction of the CAB is not only obvious but was judicially determined by the Second Circuit in *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271, 282 (2d Cir. 1946), where the court pointed out why the subject was peculiarly within the primary and exclusive jurisdiction of the CAB.

The court said that the "issues" involved in the CAB's examination into Pan American's voting with respect to a Panagra application would be "whether the Pan American Company was opposing the extension because it was pur-

suing its own advantage to the prejudice of the joint interest ('fraud') and because it was engaging in some unfair trade practice ('illegality')." Then the court stated:

> "Both those issues demand the same specialized acquaintance with commercial aviation and its ramifications as a decision upon the public convenience and necessity of the extension itself. No court, state or federal, would have that acquaintance; by hypothesis the Board does have it, and the Board alone."

This case therefore falls squarely within the holding of this Court in *United States* v. *Western Pacific Railroad Co.*, 352 U. S. 59, 64 (1956), cited by the Government (p. 42), in which the Court said that the doctrine of primary jurisdiction applies "whenever enforcement of [a] claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body."

The Government's citation (pp. 43-44) of cases sanctioning antitrust suits at the same time that the Federal Trade Commission is scrutinizing the practices in question as unfair methods of competition are not in point. The industries whose practices are subject to FTC scrutiny are not regulated by that agency as the CAB regulates and controls the airline industry, particularly with respect to route matters. Moreover, the Federal Trade Commission Act, as the cited cases indicate, permits "simultaneous proceedings under both acts." *United States* v. *Cement Institute*, 85 F. Supp. 344 (D. Colo. 1949).

Finally, the error of the district court in invading the province and usurping the authority and responsibility

of the CAB is manifest from its fashioning a decree which is contrary to all that the Board has said is required by national policy. This case thus well illustrates the wisdom of what this Court said in *Far East Conference* v. *U. S.*, 342 U. S. 570, 574 (1952), that if court action is necessary in connection with a matter within the jurisdiction of an administrative agency it should only come after the facts "have been appraised by specialized competence [to] serve as a basis for legal consequences to be judicially defined." Whether resort to the court after the CAB had exercised its jurisdiction might be justified is a matter which we need not contemplate. We submit that it is clear that the district court should not have undertaken to determine matters which the Court of Appeals for the Second Circuit has held were within the "specialized acquaintance" of the CAB and to reach a result which defeats national policy in air transportation as declared by the Board.

IV

Divestiture would be an inappropriate, unnecessary and unwarranted remedy.

The Government's argument under its Point IV in support of divestiture (pp. 47-52) is an argument in favor of divestiture of *both* Pan American and Grace and is markedly lacking in any support of a decree which would divest Pan American but not divest Grace. Significantly, the Government's argument for divestiture is addressed entirely to the case which it sought to establish but failed to establish. The heading of its Point IV (p. 47) is "Divestiture of Both Pan American and Grace's Interest in Panagra is the Proper Remedy in This Case," and the subheading (p. 48) is "Divestiture is normally the

appropriate remedy for violations of the antitrust laws caused by intercorporate combinations." Under these headings the Government argues (p. 48) in support of divestiture as a remedy for "illegal intercorporate relationships such as that between Grace, Pan American and Panagra," and the Government reminds us again (p. 49) that "the basic antitrust violation with which this case is concerned is the combination of Pan American and Grace in the Panagra enterprise." The Government's sole citation (pp. 48-51) in support of divestiture in this case is *United States* v. *du Pont & Co.*, 366 U. S. 316 (1961), in which, as the Government quotes, the "heart" of the antitrust violation was in "intercorporate combination and control."

But the case on this appeal is one in which the intercorporate relationships and the combination of Pan American and Grace in the Panagra enterprise have been held to be legal. Therefore, the Government's argument is out of place in the Government respondent's brief and is altogether inapplicable on this appeal.

We find no Government argument in support of a decree of divestiture against Pan American alone. Indeed, what the Government says (p. 48) points away from divestiture of Pan American, in view of the fact that divestiture under the decision of the district court cannot be predicated upon the existence of "illegal intercorporate relationships" requiring that remedy. Rather, the case, under the district court decision, falls within the class referred to by the Government as the "lesser restraints on competition" which are not on "a scale requiring divestiture." Indeed, a lesser restraint cannot be imagined after it is concluded that the intercorporate relationships are legal, and it is recognized, as the Government acknowledges (p. 48), that the only re-

straint has been "a mere exercise of the normal incidents of ownership."

Thus the Government is altogether unconvincing in arguing (pp. 49-50) that injunctive relief here would not be an adequate remedy for the violation found. After all, the remedy of injunction, which has been incorporated in the decree of the district court, directs Pan American to do exactly what the court said that it should have done about a Panagra application to extend its route to the United States—allow the application to be made and then submit its opposing arguments of "legitimate business considerations" to the CAB for the CAB's consideration and determination. That procedure is also in line with what the Court of Appeals for the Second Circuit said was the province of the CAB in the matter. It is, therefore, clearly not tenable to argue that the remedy of injunction is not adequate for the violation found.

We do not appreciate the Government's argument (pp. 51-52) that our argument on the subject of divestiture comes too late for serious consideration because evidence on the subject was not introduced at the trial. We have no idea of the kind of evidence the Government has in mind or of what it would have had Pan American do in this respect. The requisite facts to support our argument are all in the record. There is nothing which needs to be added or which would have been useful to add. Certainly the "broad discretion" in a district court, which is the Government's last mention, can be no basis for sustaining a decree of divestiture which is unnecessary, unwarranted and positively harmful in many respects, including the serious effect, stated by the Government to be illegal, of increasing Grace's control over Panagra, and the effect of defeating national policy in air transportation as declared by the CAB.

We submit that for all the reasons stated in our appellant's brief (pp. 72-87) the remedy of divestiture is unnecessary, unwarranted and highly inappropriate.

V

Reply to Grace

The Grace brief continues the maneuver of trying to take over the action and turn it from a case of the Government against Pan American and Grace into an action by Grace to oust its partner and complete the conversion of Panagra into a Grace satellite.

Grace seeks first (p. 3) to have the trial court decision sustained without a critical examination on appeal on the premise that this Court has only a "narrow scope of review" with respect to issues of fact in antitrust cases. No more inapposite statement could be made of the premise with which to begin the consideration of this case on appeal. There were no witnesses to the facts involved on this appeal. The evidence is almost entirely documentary. The conclusions to be drawn, whether of fact or law, principally of law, can equally be drawn by an appellate court as by a trial court. None of the considerations which prompt an appellate court to give "great weight" to a trial court's findings apply to this case. Further, our challenge to the decision below is principally on the ground that its errors are demonstrable from the decision itself without the necessity of looking at the record.

Grace's second pretense (p. 3), its assumption of injured innocence, is expressed as the "first anomaly" in the Government's position, the Government's seeking not only to divest Pan American, described by Grace as the "perpetrator of a restraint of trade," but also Grace, which

describes itself as the "principal opponent and victim of the restraint." This is the familiar fashion of placing the face of virtue on aggrandizement.

Of the same piece is Grace's reference (p. 3) to Pan American's opposition to the extension of Panagra to the United States as "the significant restraint at which the Government's case is aimed." This attempt to create the impression that this lawsuit was prompted by and aimed principally at some action of Pan American, and that Grace was mistakenly dragged in as a defendant, is best corrected by a reference to the Government's own statement of its case to which we have previously referred in this reply brief.

Grace's distortion of the case continues with its edited statement of the facts. We quote Grace's basic statement of the facts (pp. 8-9), from which its entire argument springs:

> "Shortly after the formation of Panagra an understanding developed between Grace and Pan American whereby Panagra was to operate down the west coast of South America and Pan American was to operate along the east coast of South America. This arrangement was based upon the economic situation existing prior to 1938 and the policies of the Post Office and State Departments during that period, under which competition between United States flag air lines in South America was not possible. It reflected and was defined by the contract routes granted to Panagra and Pan American by the Post Office Department during that period. There was never any understanding between Pan American and Grace limiting possible future operations of Panagra north from the Canal Zone. The east-west zoning arrangement ceased to exist in 1938 when the expiration of Panagra's ten-year mail contract and the enactment of the

> Civil Aeronautics Act fundamentally altered the situation and made competition possible."

The deficiencies in this statement are evident:

First, the understanding as to where Panagra was to operate was not any mere matter of "understanding" developed "after the formation of Panagra." It was explicitly expressed in the exchange of letters (Opinion, R. 5377-378, n. 7; P. Ex. G-15, R. 354; G-18, R. 359) between the parties pursuant to which Panagra was organized to operate an airline from "the Panama Canal to Valparaiso, Chile," with the possibility of its extension to Buenos Aires. This was not "the end immediately in view," as Grace now states (p. 51). It was "the view," as stated in the letter agreement of the parties, of what the jointly owned airline "ultimately" would be.

Second, naturally and necessarily, the "zoning arrangement" made by the parties and acknowledged by Grace was not merely "east-west," as Grace now describes it, but was equally north-south because Pan American was already operating north of the Canal and Panagra was formed only to operate south of the Canal and to connect with Pan American at the Canal. Everything which Grace states as calling for and justifying the "east-west zoning arrangement" also mandated and justified the north-south zoning arrangement:

> (p. 9) "the economic situation existing prior to 1938 and the policies of the Post Office Department and State Department during that period under which competition between United States flag airlines in South America was not possible."
>
> (p. 9) the zoning arrangement "defined by the contract routes granted to Panagra and Pan American by the Post Office Department during that period."

> (p. 19) Government "policies" which made it "economically impossible" for more than one United States flag airline to engage in air transportation on "any single international route."
>
> (p. 40) "this zoning arrangement arose out of the 'no parallel' policy of the Postmaster General and the air mail contracts awarded pursuant to that policy."

Pan American was on the United States-Canal Zone route by virtue of a mail contract, and it was in reference to that fact that Panagra was formed to operate from the Canal Zone south down the west coast of South America. The "zoning arrangement" between the parties, following the "no parallel" policy of the Government and agreement of the parties, obviously applied equally to the routes north and south of the Canal as to the routes along the east and west coasts of South America.

Third, there is not a semblance of support for the Grace statement that the "zoning arrangement ceased to exist in 1938 when the expiration of Panagra's ten year mail contract and the enactment of the Civil Aeronautics Act fundamentally altered the situation and made competition possible." This newly developed thought of Grace, expanded in its brief with the description of the "zoning arrangement" as being "temporary and *ad hoc*," is more of the fashioning of the facts to fit the argument. It finds no support in the district court's opinion. It is not even supported by the self-serving "contemporaneous memorandum" of ten years later referred to by Grace (p. 48) as proving its point. And in saying that "Grace never relied upon or recognized any zoning arrangement after that time," Grace has forgotten several exhibits to the contrary (P. Ex. G-143, R. 622; G-152, R. 638).*

* As the Government pointed out on pages 46-47 of its "Trial Brief for United States" in the district court, Panagra acknowl-

The zoning arrangement, north-south as well as east-west, was plainly neither temporary nor *ad hoc*, and equally plainly the reason for it did not cease in 1938. It is notable that Grace does not suggest that competition between Pan American and Panagra would be "economically" possible after 1938. The Government has been as concerned about uneconomic competition since 1938 as it was before 1938. It was not until 1946 that the President, overriding an evenly divided CAB, certificated an additional carrier into Latin America, and the CAB has repeatedly said over the past ten years that further American flag competition in the area would not be sanctioned because it would be a "waste of public funds or private investment." *New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501 (1954); *United States-South American Route Case*, CAB Dkt. No. 12895, Order No. E-17289 (August 8, 1961).

Grace also rears its argument on a premise clearly contrary to fact when it charges (pp. 47, 51) Pan American with preventing Panagra's "logical development" in com-

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edged the existence of the "zoning arrangements" or territorial agreement in 1943 and again in 1948. In 1943 Vice President Campbell of Panagra sought to have Panagra extended eastward to Iquitos and Tabatinga in Peru. He acknowledged his awareness of survey flights, on the basis of which Pan American did not consider Iquitos to be west coast territory, but he thought he could prove that Pan American had agreed that all of the country of Peru was Pan American-Grace territory (P. Ex. G-143, R. 622). In 1948 J. Peter Grace, Jr., President of W. R. Grace & Co., objected to a proposed Pan American Miami-Bogota service on the grounds that: "It had been our understanding that it had been agreed at the time that the Panagra Through-Flight Agreement was signed that Western Colombia was Panagra's territory and furthermore that a Gentlemen's Agreement was made that Panagra could at any time petition the C.A.B. for inclusion of Bogota and Medellin on its route between Balboa and Lima and also that if it would facilitate this in any way, Panair would sell Panagra U.M.C.A." (P. Ex. G-152, R. 638).

petition with Pan American. We have already made it sufficiently clear that there is no such "logical development" of Panagra. The explicit contemplation and creation of the parties was of an airline running south of the Canal which would form a connecting and complementary service with Pan American north of the Canal. It was clearly never contemplated, and would have been directly contrary to the understanding of the parties, for Panagra to be extended north of the Canal in competition with and in replacement of Pan American. There would be nothing logical in a development which would be such a departure from the design in Panagra's formation.

Indeed, as we have pointed out in our appellant's brief (pp. 18-19), the idea of "competition" between Panagra and Pan American through a route for Panagra from the United States to the Canal is a mirage and pretense of Grace, a euphemism which it employs for a takeover of the route from Pan American, a substitution of Panagra for Pan American on that route. The unquestionable fact (P. Ex. G-1139, R. 1703; D. Ex. PS-116, R. 4595; R. 194-195, 266, 332), recognized by the district court (Opinion R. 5405), is that the establishment of Panagra on a route between the Canal and the United States, without a corresponding establishment of Pan American on a route from the Canal down the west coast of South America, would result, not in "competition" between Panagra and Pan American, but in the replacement of Pan American by Panagra on the route between the United States and the Canal.

It is this all important fact, entirely ignored by Grace, which sheds the all revealing light on the controversy between Grace and Pan American over the extension of Panagra to the United States. Naturally, and we say entirely legally, Pan American refused to accede to the

desire of its partner that their joint enterprise take over Pan American's route and replace Pan American on the route between the United States and the Canal Zone. Grace, on the other hand, was acting both in breach of contract and in breach of faith with its partner in undertaking to have Panagra, which was designed to be a connecting carrier with Pan American, break the connection and replace Pan American in its part of the joint service. Pan American cannot be cast in the role of the sinner and Grace pose as the saint in this clash of Pan American's defense and Grace's offense.

We stand squarely on the proposition that *there is nothing illegal in one partner's refusing to support the proposal of the other partner that their joint venture be extended to replace his own business.*

Of course, if Grace were successful in having Panagra replace Pan American on the northern sector of the run between the United States and the west coast of South America, and have the whole run all to itself, it would be a coup for Grace through the elimination of Pan American from any part of the run, but if Pan American is not to be sacrificed to Grace's ambitions, and competition is to be created between the two carriers, it would have to be upon the basis of Pan American's being given a route from the Canal Zone down the west coast of South America at the same time that Panagra was given a route between the Canal Zone and the United States. In that competitive frame, which would be the only competitive possibility and reality, the three losers would be Panagra, Pan American and the public, through the waste of public funds and private investment of which the CAB has eloquently spoken (*New York-Balboa Through Service Proceeding, Reopened*, 18 CAB 501 (1954); *United States-South American Route Case*, CAB Dkt. No. 12895,

Order No. E-17289 (August 8, 1961); see in addition R. 261 *et seq.*, D. Ex. PS-114 through PS-131, R. 4584-617).*

Further, we submit that Grace cannot maintain the proposition (p. 10), echoed in the decision of the district court, that Pan American was obliged to abandon its judgment and both its right and responsibility as a half owner of Panagra and submit to the CAB the question of "whether extension of Panagra's route was economically sound and in the public interest." Significantly, the Government (pp. 49-50), arguing in favor of divestiture, contends that Pan American should not be placed in that position. Pan American was plainly not obliged to allow an application to be made to the CAB for an extension of the joint venture to take over Pan American's franchise between the United States and the Canal, or to in turn apply for a route of its own between the Canal and western South America to compete with the joint venture, or conduct the controversy with its partner before the CAB as referee. Grace had its right and remedy, if it thought that there was any illegality or fraud in Pan American's action with respect to the Grace proposal for a Panagra route extension, to take the issue to the CAB under the ruling of the Court of Appeals for the Second Circuit in *W. R. Grace & Co.* v. *CAB*, 154 F. 2d 271 (2d Cir. 1946).

* Grace suggests (p. 67) that a filing by Pan American in 1957 of a petition for extension of its routes to points on the west coast of South America (CAB Docket No. 8597) indicates that Pan American does not consider competition between Pan American and Grace "economically impossible." What Grace does not note is that, in line with all that has been said in our briefs about competition between Pan American and Grace requiring competition south of the Canal as well as north of the Canal, Pan American filed the petition referred to only after Grace, in breach of the Through Flight and Parent Company agreements, petitioned for an extension of Panagra's route from the Canal to the United States (CAB Docket No. 8511-12; R. 294-295).

CONCLUSION

The judgment of the district court against Pan American should be reversed and the complaint of the Government dismissed.

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REPLY

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 23

PAN AMERICAN WORLD AIRWAYS, INC., APPELLANT

v.

UNITED STATES OF AMERICA

No. 47

UNITED STATES OF AMERICA, APPELLANT

v.

PAN AMERICAN WORLD AIRWAYS, INC., W. R. GRACE & CO., AND PAN AMERICAN-GRACE AIRWAYS, INC.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR THE UNITED STATES IN NO. 47

Grace contends that its 50 percent participation in the formation, continuation, and present operation of Panagra is not a combination in restraint of trade. In our original brief in Nos. 23 and 47 (pp. 47–66) we demonstrated, to the contrary, that the 50 percent control by Grace, the dominant steamship line between the United States and western South America, over Pan-

agra, the largest airline in western South America, tended to restrain, and in operation has actually restrained, competition between air and sea transportation in United States foreign commerce with western South America. The legal issues have already been thoroughly discussed, but since Grace's brief gives a distorted view of the facts, it is necessary to set forth the evidence showing (1) that Grace joined in forming Panagra in an effort to meet future competition from airlines; (2) that Grace's 50 percent control of Panagra has in actuality resulted in preventing full and vigorous competition between Panagra and Grace; (3) that air and sea transportation have been and are competitors for large amounts of both passenger and cargo traffic in western South America; and (4) that the agreement to divide territories between Pan American and Panagra was not limited in time.

1. Grace argues (Br. 28) that "in participating in the organization of Panagra, Grace's sole interest was to initiate an enterprise which would actively and effectively develop this new means of transportation." This was not the view of the Grace managers who embarked upon the Panagra enterprise. In March 1930 President Iglehart of Grace wrote to Roig, one of its vice-presidents, that Grace (R. 966):

> went into this business because we felt that in view of our big investment in steamers we should become a party to this new branch of transportation which will clearly become more important and which in ten years will be a real competitor of our steamers.

In a similar letter to Vice President Garni of Grace, Iglehart explained that (R. 968):

> We went into this business because we felt that in ten years from now air transport would be an important competitor of steamer transport in which we have so large a capital investment, and we felt that we, as a matter of policy, should begin to learn and develop this air transport work. From a broad standpoint we must be in this competitive line * * *.

These statements of the chief executive officer of Grace demonstrate that the purpose of Grace in forming Panagra was to control airline competition with its steamship business. As contemporary documents, they are more reliable indicators of Grace's motivation in joining with Pan American than the unsupported assertions of interested officials made before the district court. See *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395–396. The district court, while refusing to hold Grace's participation illegal, had no doubt that it had just such anticompetitive purposes (R. 5389):

> By joining with each other in a joint venture on the west coast, Grace on the one hand would be assured against the entry of an independent American airline competitor into its west coast domain, and gain time to acquire the experience and know-how of this new industry, and one day perhaps to succeed to complete domination of the joint company. * * * Their [Grace and Pan American's] method of organization of the joint company appears calculated to give each negative control of the company to insure against the possible treachery of the other to expand the operations of the company

> in competition with their respective independent lines. * * *
>
> * * * Their combined interests on the west coast could * * * protect their independent systems from the competition of [an independent west coast American air] carrier.[1]

2. The operation of Panagra, in actual practice, led to restraint of competition between Panagra and Grace, the largest air carrier and steamship line, respectively, in western South America. The strategy to be used in building Panagra was not to be allowed to injure Grace's existing steamship interests. In a memorandum to Vice President Roig, Vice President Patchin, and Cogswell, the Manager of Grace in 1931, President Iglehart urged that Panagra be put in charge of (R. 969–979):

> a man who would not only build up the air traffic but would build it up in a way in which it would not necessarily draw traffic away from our steamship line, but on the contrary would tend to build up the whole movement to and about South America and by getting these steamer and air traffic men working together, we would build up a movement that would be reciprocally beneficial to the two interests.

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[1] Grace argues (Br. 23–24) that the district court was merely reciting the government's arguments when it discussed the anti-competitive motives which impelled Grace to join in the Panagra enterprise. We think it plain on the face of the opinion below that *the court* found Grace to have been in fact so moved, but viewed these purposes as completely legitimate in light of the unique contributions which Grace could make to the success of an American air carrier in western South America.

> I appreciate the fact that steamer and air traffic are competitors, but I believe that by handling the whole matter as I have indicated we may avoid the prejudice of competition and even get general benefit from it.

Grace made several specific efforts to prevent vigorous Panagra competition through lower rates. In February 1933, Harris, a vice president of Panagra, wrote to MacGregor, a vice president and its general manager, that a member of Grace's New York office had stated at a meeting that (R. 974):

> he felt [Panagra's] rates were now at too low a figure compared to the steamer rates; in other words that we were not on a reasonably competitive basis in that our operating costs should be much higher than steamer operating costs, and that consequently our tariffs ought to be much higher.

Two months later, President Iglehart wrote Vice President Garni of Grace (R. 977):

> I think that if you will check it up you will find that * * * you can go from Lima to Arequipa cheaper by plane than you can by steamer and rail. This is a condition which does not exist anywhere, and seems to indicate to me that air rates are getting too low in comparison with steamship rates.
>
> I think that you might * * * see whether your Panagra rates have not actually got too low and whether or not there isn't some way of jacking them up, not suddenly or in a radical way but gradually, for we know that these things can be done gradually without calling attention or creating any opposition, whereas

> if anything radical is done it is spotlighted and always causes difficulty.

Again in 1937, important Grace and Panagra officials had discussions concerning Panagra's fares, in which Grace suggested higher fares for Panagra. Thus, Vice President Roig of Grace wrote Iglehart that "I think he [Muhlfeld, the sales manager of Panagra] is unduly concerned about getting the air rates too much over steamer rates. In making his comparisons, moreover, he takes as the steamer the minimum on the Clara etc. which I think gets him off to too low a start" (R. 1020). As a result of these discussions, increased rates for Panagra were proposed by Muhlfeld (R. 1021).

Panagra sales, in almost all cities, were handled by agencies under the control of Grace (R. 1049), an arrangement which continues in many areas to the present time. Vice President Roig of Grace described the arrangement in 1930 (R. 1051):

> The outstanding features of the Grace agency agreement is, of course, that it places the whole growth and development of the airways business in the hands of the Grace Houses.

While the management of Grace and Panagra attempted to prevent these offices from unduly favoring Grace's interest over Panagra's (*e.g.*, R. 970, 982–983, 1003), the record shows that this effort was often, perhaps even generally, not successful. A letter from Vice President Harris of Panagra to its home office in 1930 said (R. 1054):

> It is my impression that no prop[a]ganda with regard to air travel is being carried out by the

> Panama [Grace] Agencies in either Cristobal or Balboa, and this has been our experience in general in most of the large Grace offices. They are perfectly willing to sell passages on planes if the customer goes in and asks but do very little to increase sales.

In a memorandum in 1932 Cogswell, the manager of Grace, reported that a Panagra traffic man (R. 970):

> has made the statement in a report that he considers Panagra would do better in the sale of passenger tickets at Buenaventura [Colombia] and Guayaquil [Ecuador] if represented by agents who do not also represent steamship lines, which may, in a sense, be considered competitors * * *.
>
> * * * There is somewhat the feeling in Panagra, however that the agents do not go out and attempt to sell tickets, pointing out the advantages of airplane travel, but rather wait until approached by prospective passengers. In other words, their position is passive rather than active.

In 1933, Cogswell submitted a memorandum to Vice President Roig of Grace (R. 1072):

> Mr. MacGregor [the manager of Panagra] has several times stated to me that in his opinion the Grace Houses on the Coast do not actively go after business, either steamer or air, but rather take the attitude that they are glad to sell tickets to anyone who will come in and buy one. While I have naturally taken the position with him that I do not think his impression is correct, nevertheless, I must confess that I have gathered in a general way,

> in the case of Panagra at any rate, that there is something in what he says. Most of the activity and original ideas for getting new business, which is extremely necessary in the case of airways, has originated with Panagra personnel.

Shortly thereafter, Vice President Garni of Grace wrote Roig that, on the basis of a visit to Peru, Cogswell's memorandum seemed accurate (R. 1073). That same year, Kirkland, an official of Panagra in Colombia, wrote MacGregor concerning Panagra's poor record in securing passage tickets to two points in Colombia, in relation to steamships (R. 980):

> Another contributing factor which, while a most ticklish one to mention, nevertheless exists, is that our Colombian representatives are primarily steamship men. I do not at all wish to make again a misstatement which this office once before made to the effect that our agents are our biggest competitors, but I still feel that the major portion of their contact work and solicitation is obviously along the lines of steamship business.

In October 1933, Vice President Harris wrote Vice President MacGregor, both of Panagra, that (R. 1080):

> [O]ur agent in Guayaquil * * *, like some of our other Grace friends, seems to think that Panagra is something to be exploited for the benefit of the agency, regardless how unethical his actions may be.

A few weeks later, Vice President Garni of Grace wrote Grace officials in Peru (R. 981–982):

> [A]n incident such as was reported earlier in the year with reference to the lack of intelli-

> gent passenger solicitation in the Arequipa and other districts, or incidents such as that of one of our employees openly stating and confirming it in a memorandum that when a passenger turns up with an exchange order for a rail or air passage it does not suit that particular office to encourage a trip by air because if he sold air passage he would get no commission * * * has been greatly magnified in the various discussions. I could give you a number of other similar incidents * * *.
>
> Not very long ago someone presented himself at an office of the Grace Line inquiring as to the quickest way to get to a given point. The particular employee behind the counter talked nothing but Grace Line and when the client inquired about air service the ticket seller admitted there was an air service but that steamer travelling was a great deal safer.

Although Garni emphasized that these practices must stop, they apparently continued. In 1934 Kirby, an official in Grace, wrote one of its vice presidents, that (R. 1089):

> I had several conversations with Harris [a vice president of Panagra] along the lines that it was your feeling in New York as well as my own, that Grace was not fulfilling the function it was intended of them by not attending to traffic.

An official of Panagra pointed to an instance of a Grace officer not telling two passengers of Panagra service which could be of use to them, even while using Panagra literature to answer questions about train connections and the countries to be visited (R.

984). In 1935, Vice President Harris wrote (R. 985):

> [T]he Grace organization at the Canal Zone * * * is completely a Grace Line office * * *. A number of times in the past Brown has shown his inability to look on Panagra business as other than competition * * *.

Obviously the two were in competition, and the competition would have been vigorous if the Grace office had not had the responsibility of handling Panagra's business in the Canal Zone.

In 1936, Holguin, a representative of Grace in Ecuador, wrote Vice President Garni (R. 995):

> [T]o have Grace Line lose this business to Panagra after having handled it successfully for so long, would be most unfair. In addition, I have in mind the fact that when shipments are made on Grace Line steamers the whole of the revenue remains in the organization, which is not the case should Panagra transport the gold. After the Panair's proportion of the traffic is deducted, I believe that the Grace share of the revenue would only amount to some 20% of the total freight, since I presume Panagra would take the shipment to the Canal, at which point it would be turned over to Panair as far as Miami, and from Miami to destination some other Line would take a hand in the business. Therefore, on the run Guayaquil/Cristobal Panagra would, I presume, receive only 40% of the total freight paid, and only one half of that amount would remain with the Grace organization.

Garni responded that "[f]rom a net revenue point of view, there is, of course, an added advantage to the Grace organization through the retaining of these shipments for the Grace Line * * *" (R. 998).

Later in 1936, Vice President Roig of Grace wrote Holguin also concerning gold shipments (R. 1003):

> This happens to be one of the few instances which have arisen involving a conflict of interest between Panagra and the Grace Line. I recognize that in this situation your position as representing both concerns is a difficult one.

Roig told Holguin to be neutral. Shortly thereafter, Vice President Harris of Panagra wrote Vice President MacGregor of that same line that (R. 1005):

> [W]hile I feel that Holguin has done a good deal for Panagra in many ways, at the same time I feel that he definitely has steered the Ecuadorean gold shipment from Panagra to the Grace Line, and in his dual capacity has never been prone to give Panagra any breaks which he could give to Grace.

In August 1936, an employee of a Grace agency in Ecuador wrote that he was severely reprimanded and was in danger of losing his job because a memorandum he had written, which included ideas to help Panagra, had been discovered by his superior (R. 1006–1009). The memorandum suggested that "some of the Panagra advertisements * * * [include] tariffs to the more important cities (passenger fares) in the same way that Grace does, in view of the fact that some of our fares for these points are lower than

theirs * * *" (R. 1007–1008). The letter said (R. 1006, 1008):

> [I]t seems to me that everything related to Panagra is looked upon with a jaundiced eye, they [the Grace representatives] are jealous of it and I cannot understand why they can't be more broadminded and permit each Company to carry about its own business in the best way possible.
>
> * * * * *
>
> As was to be [expected] I have no friend on my side at Guayaquil, I am completely alone * * *. I would have against me the whole management, MacLean and Arrarte—the latter has a very special dislike for Panagra, although I cannot understand why. It is because of this that they loathe me, just because I can't agree with them on this.

Shortly thereafter, Vice President Patchin of Grace wrote Roig that (R. 1101):

> Vidal [an official of Panagra] has the idea that at lesser points the Panagra work is left to persons who do it rather perfunctorily and who do not exhaust the full possibilities. I have no personal knowledge, but I can imagine this may be true.

MacGregor, Panagra's vice president and general manager, wrote that "there is no question that the open animosity of Ed. Ford, President of the Grace Line, is responsible for this attitude on the part of steamer personnel" against Panagra (R. 1010).[2]

[2] The particular actions to which MacGregor was objecting were the refusal of Grace Line operating personnel to disseminate Panagra literature to Grace steamship passengers.

In 1938, a Grace representative who had pressed Panagra's interests lost his position in Guayaquil, Ecuador, ostensibly for reasons of economy. In a letter describing the reason for this action, he said (R. 1023):

> [W]e also know the real reasons and that is that it has been brought about by the Grace Line, and by no one else because of the last gold shipment which they lost and which meant $3700 U.S. Cy. for Panagra. They also know that the Central Bank plans to make many large gold shipments during the coming year and they know that if I am let out there will be nobody to handle the competition against them.

After Grace had cancelled an agreement with Panagra to handle Panagra's unaccompanied luggage, Patchin, a vice president of Grace, wrote Roig, another vice president, that a Panagra official "feels that the general run of Grace *Line* traffic people are very unsympathetic, if not hostile, to air traffic * * *" (R. 1025). A week later Roig wrote Patchin that (R. 1027):

> No-one can expect Grace Line to sell air transportation at the expense of steamer transportation any more than Panagra or Panair would be expected to do the reverse, but there must be [s]ome points where we can work together to much advantage. To date we have somehow not succeeded in finding them.

In 1939, a Panagra employee in South America wrote Vice President Harris that the Grace agencies

assigned inferior men to sell for Panagra even though Panagra paid them ample salaries (R. 1125–1127). In 1940, Vidal, another Panagra representative in South America, wrote to Roig, who had become president of Panagra, that the Grace agencies in Ecuador are providing Panagra with inadequate services (R. 1131–1133). A little later, Vidal wrote Roig that (R. 1137):

> I have felt for years that one of the important reasons why Panagra was pretty much of a stranger in Colombia until recently, was the fact that the Grace agencies in that country did not have the time, the inclination or the knowledge to become interested in our problems * * *.

He said that there had been an improvement but much remained to be done.

In 1941, Campbell, a vice president of Panagra, wrote Roig again about the problem of Grace agencies hiring incompetent men to represent Panagra (R. 1138–1140).

In 1942, a Panagra representative in Ecuador wrote Roig about the bad service to passengers by its agents in that country (R. 1148):

> [P]ossibly our agents should set themselves up primarily on footing required to properly handle Panagra business and to take their other activities in stride, rather than appear to take Panagra business in the stride.

Muhlfeld, Panagra's sales manager, wrote Grace's representatives in Colombia that "[o]ur Fr[ei]ght Representative * * * gathered the impression, during his recent visit to Cali [Colombia], that no attempt had been made to secure for Panagra the shipments

of gold which, I understand, are now going forward by steamer from Colombia to the United States" (R. 1029).

A confidential Panagra memorandum in 1943, written by a former employee of Panagra, said that Grace representatives in Peru had refused to allow the purchase of needed technical equipment for Panagra aircraft (R. 1031–1032). The memorandum, in describing events about five years before, stated (R. 1032):

> I made frequent inspection and business solicitation trips over the territory encharged to me. * * * In Ecuador * * * my every move was watched [by Grace representatives] with suspicion and my efforts were frequently checkmated. * * *
>
> * * * The Manager of the Guayaquil Agencies Company [of Grace] and his assistants contended that I must abstain from soliciting effective or potential Grace Line cargo and confine my efforts to soliciting such items as might be "Parcel Post" material. The manager pointed out to me that the commissions earned by his organization in Ecuador (which is 100% Grace-owned) from Grace Line business were enormously more important to him compared to anything he got out of Panagra, with the further consideration that any profits that might be earned on Grace Line business accrued entirely to Grace interests, whereas Grace only obtained 50% of any profits on Panagra business. The discussions were long, to some extent heated—net result an impasse.

After the Panagra representative did secure a gold shipment for Panagra and returned to Guayaquil, he

"came in for bitter remarks on the part of the Grace manager and his assistants" (R. 1033). The memorandum concluded (R. 1033):

> It is nearly five years since I left Panagra and, in the meantime, I understand and believe that the above conditions have radically changed and that as a matter of policy dictated by New York Grace Headquarters, all offices of Grace now watch without bias * * * the interests of Panagra, but obviously if at any time a greater Grace interest were to be adversely thereby affected it is only natural to suppose that the major interest would gain supremacy.

A lengthy memorandum on Panagra operations in Bolivia emphasized that Grace's management prevented the Grace agencies from paying sufficient salaries to hire capable representatives for Panagra and the result was inadequate sales representation (R. 1161–1163). In 1949, Vice President Shea of Grace admitted that Grace's "responsibilities as Panagra's general sales agents [in Santiago, Chile] are not being discharged in a way that is at all satisfactory and * * * the outstanding deficiency is the lack of top direction and management" (R. 1184). Another memorandum in 1953 discussed the bad organization of the Grace office in Santiago (R. 1193):

> The amazing thing to me is that in all of these Grace offices there is practically no way that officials of Panagra can insist that their plans and ideas be carried out.

In fact, Grace employees "show complete unconcern towards any plans for suggestions submitted by a [Panagra employee] unless they happen to strike their fancy at that particular moment" (*ibid*).

Finally, also in 1953, a note by a Panagra representative to his division sales manager shows clearly the meaning of Grace's control of Panagra (R. 1194):

> You will recall that a year or two ago we were endeavoring to assemble evidence which might support the contention that the other ownership interests in Panagra exercised undue control and influence over their policies even to the extent of being detrimental from the standpoint of a purely airline operation.
>
> As this subject tends to flare up from time to time, the attached piece of evidence may be of interest to the top levels of our company. You will note that this evidence consists of a routine reservations and VIP teletype message in which it is indicated that a flag stop will be made at Antofagasta, Flight 300 March 30, to pick up the Executive Vice President of Anaconda Copper per okay by Grace Line, New York. Anaconda Copper, of course, is an important ore shipper on the Grace Line.
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> * * * [I]t is clearly the case of the airline effecting a flag stop to pick up an executive who is important to the steamship company.

We have noted that Grace's management frequently attempted to ensure that its representatives treated Panagra fairly. The reason for this was, in large measure, that Grace wanted to keep control of Panagra's traffic operations. Thus, Vice President Roig of Grace wrote Vice President Garni in 1933 (R. 1074–1075):

> The difficulty in Santiago as well as in Lima is not that the work is not being well done by the Panagra staff but that they are increasingly

> taking over the work which it was always intended that our officers should perform as agents and if the development along this line continues, our offices are likely to find themselves performing no functions at all * * *.

A year later Roig wrote Garni, in objecting to a proposal that a Grace employee who handled Panagra traffic be transferred to Panagra, that "traffic * * * is an essential part of our Grace agency arrangement and should not be released" (R. 1085). Kirby, an employee of Grace, wrote Garni that he had objected to a proposal by Panagra to establish a sales office of its own in Lima on the ground that "it was an example of the necessity for our handling their traffic as I obviously could not sympathise with the idea of an outside sales office over which we had no control" (R. 1090). See also R. 1091.

Grace was fearful that Panagra's objections to the failure of Grace's representatives to promote Panagra traffic would result in Panagra establishing its own traffic representatives outside Grace control. Thus, Kirby wrote Garni in 1934 that (R. 1092):

> We are particularly a little fearful that criticism will become more and more frequent from Panagra sources and that unless some steps are taken to avoid such criticism, the deficiences of our present set-up might afford an excuse for attempted gradual encroachment of Panagra personnel on our functions.

In 1934 Vice President Patchin wrote Roig that Panagra's dissatisfaction with Grace's efforts to secure traffic for Panagra (R. 1101):

> may produce a state of mind rather menacing to Grace's position as Traffic Agent unless more

thorough traffic solicitation is made apparent by Grace, not only at the principal cities, but throughout the provinces.

Thus, Grace's encouragement of its employees to treat Panagra fairly was not instituted, in large part, in hopes of strengthening Panagra or, certainly, of allowing it to compete vigorously with Grace, but to protect Grace's almost complete control over Panagra's traffic solicitation.

Since the evidence of actual restraint or competition largely involves events in the thirties, immediately after the formation of Panagra, it supports the government's contention (see *supra*, pp. 2–4) that Grace's intent in forming Panagra with Pan American was to restrain competition. For the immediate result of an arrangement goes far to show what was its purpose. Moreover, the evidence of the thirties also illustrates the tendency to restrain competition inherent in a sea carrier's control over an airline. Even assuming that in recent years most of the blatant restraints on competition in the thirties have ceased, Grace would almost certainly prevent vigorous competition from Panagra which would be likely to harm Grace's interest severely.

It is clear from the evidence that throughout the thirties the management of Grace attempted to prevent vigorous rate competition between Grace and Panagra and that Grace's representatives in the field who also represented Panagra preferred the interests of Grace to those of Panagra. It is true that Grace management attempted from time to time to prevent its representatives from practicing outright discrimi-

mation against Panagra. But its lack of success demonstrates the inherent tendency of Grace employees to prefer its interest to Panagra's—particularly when carriage of passengers or cargo on Grace steamships was more profitable to Grace than their carriage on Panagra airplanes since Grace owned only 50 percent of Panagra and therefore received only 50 percent of its profits. The efforts to hold Panagra's rates up show that this tendency applied to management as well as other employees.

We do not doubt that Grace wished the Panagra enterprise to succeed. This is quite different, however, from competition between two independent enterprises.

3. In an effort to show that steamships and airlines are not in sufficient competition for the combination of the two to violate the Sherman Act, Grace argues that the two services are offered in different markets because airline passengers seeking rapid transportation would not travel by boat and aircraft carry less than one percent of the freight. The argument attempts to divert attention from the decisive issue. It is immaterial that there are a great many instances in which an airline and steamship company are not in competition even though their routes are parallel. The decisive point is that there are many travelers and shippers for whose patronage the two carriers can and do compete even though other passengers and shippers have different requirements. It is as absurd to compare the substantial area of competition between air and sea carriers to the total transportation market as it would be to measure the

effect of the combination of manufacturers of anti-friction bearings by their total percentage of manufactured goods in the United States.

The fallacy in Grace's argument is easily illustrated by one of its own examples. Drawing upon the opinion in the cellophane case, *United States* v. *E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 393, Grace asserts that bricks and wood are not in the same market although both are building materials. This over-simplification ignores the context in which the Court used the example. The problem before the Court was to define the market in which duPont was alleged to possess monopoly power—the power to control prices and exclude competitors—in violation of Section 2 of the Sherman Act. If the question were whether a company which manufactured and sold nearly all the brick in a geographical area possessed monopoly power in violation of Section 2, it would be no defense to point to large lumber and stone dealers offering products which could take the place of bricks. This is so because there are many buyers of brick who would not wish to use wood or stone, so that power over the price of those commodities would not be essential to effective control over the price of brick.

Suppose, however, that one company already manufactured and sold nearly all the brick in a geographical area, that another company sold 50 percent of all wood, and that a proposed merger of these two companies were attacked under the antitrust laws. The merger would not necessarily prejudice those buyers who wanted only brick or those who wanted only wood, although the existence of "interindustry

competition" (*du Pont, supra*) might ultimately produce an effect upon the prices paid by even those buyers. The merger would, however, directly injure the group of customers in the middle range, who might use either material. The proper focus of inquiry into the validity of the merger is that area in which competition is thereby eliminated. The true principle was succinctly stated in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 326:

> * * * the boundaries of the relevant market must be drawn with sufficient breadth to include the competing products of each of the merged companies and to recognize competition where, in fact, competition exists.

In short, the market to which one looks depends upon the purpose of the inquiry; and the purpose is to see whether there is a substantial volume of commerce in which competition will be suppressed.[3]

Judge Murphy erred in supposing that the case at bar is directly concerned with the passengers at either extreme who could not and would not use steamer transportation as a substitute for air travel or an airline as a substitute for a sea voyage. Among the 250,000 passengers who travel between the United States and South America each year (R. 1359) there undoubtedly are a large number who might be induced to use either form of transportation, and as to

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[3] See also *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F. 2d 800, 811–812 (C.A. 9), certiorari denied, 370 U.S. 937; *Erie Sand and Gravel Co.* v. *Federal Trade Commission*, 291 F. 2d 279, 281–282 (C.A. 3); *United States* v. *Union Pac. R. Co.*, 226 U.S. 61, 87–89.

them the steamship and airline are competitive. How many are induced to use either form of transportation will depend upon the kind of service each offers and the efforts made to sell that service. As we have shown above, Grace was amply aware of the competition and tried to restrict it.

Similarly, in the case of cargo it is not determinative how much cargo does not, and perhaps could not today, be carried by air. It is sufficient that many shippers are in a position to use either form of transportation, and it is to them that one must look to see whether the combination has the prohibited effect on competition. Nor should the opportunities for growth be ignored, as Grace would do. In 1930, airplanes carried an insignificant percentage of all the cargo. Although it seems doubtful whether air carriers will ever capture as large a share of all cargo, as they have of passengers, the 34-fold increase in the volume of air freight between 1945 and 1961 indicates the strong potential. Indeed, Panagra almost quadrupled its air freight in the decade prior to 1961.

If Grace's present litigating position that airlines cannot really compete for cargo with steamships is also the company's commercial policy, its outlook vividly demonstrates one of the reasons that a combination of airline and steamship interests is an unlawful restraint of trade since other airlines are well aware of the competitive opportunities. Thus, a cargo manager of Pan American testified (R. 67):

> *Q.* From your point of observation would you say that there is an active area of competi-

> tion [in the North American-South American trade] between air carriers and ships?
>
> * * * * *
>
> *A.* Well, yes, I believe there is an active area of competition between surface and air at the present time.

Similar testimony was given by the President and General Manager of an all cargo carrier operating between Florida, Central American points, Bogotá Colombia, and Guayaquil, Ecuador (R. 78):

> *Q.* * * * [w]ould you say there is an active area of competition there between steamships and air cargo carriers?
>
> *A.* Well, our particular phase of operations I consider most definitely competitive.

The witness went on to cite many commodities and instances of effective cargo competition.

We have already referred to three aspects of the proof that Panagra and Grace offer competing services: 1) the evidence that Grace combined with Pan American to form Panagra because of its expectation that airplanes would soon be competitive with steamships (pp. 2–4); 2) Grace's efforts to hold up Panagra's rates to prevent transfer of traffic from Grace to Panagra (pp. 5–6); and 3) the reluctance or even refusal of Grace's employees, who also represented Panagra, to attempt to obtain traffic for Panagra when this traffic was already moving, or was likely to move, on Grace's steamships (pp. 7–15).

As shown in our principal brief (pp. 51–55), air freight is a comparatively new business, and for this

reason the record contains many fewer specific instances of opportunities for competition between Panagra and Grace. However, even in the mid-thirties, active competition was possible and, to a considerable extent, existed between air and sea transportation for gold and platinum shipments. For example, in 1935, Smith, a Panagra representative, wrote its home office that Grace was about to carry twenty-five cases of platinum from Buenaventura to New York "unless we are able to offer a competitive freight rate" (R. 987). A subsequent letter said that the shipment "eventually [went] to our competitors" because of the difficulty in obtaining information on rates until too late and the high cost of insurance on shipments by air (R. 988). A few days later, another letter from Smith inquired (R. 989):

> as to what progress is being made in regard to establishing a competitive rate for the class of traffic involved. There are several other shippers of treasure located on the west coast whom we would like to go after in case we find that we can compete on even terms with our surface competitors.

In answer to the letters, Vidal of the Panagra main office analyzed air and sea charges between Buenaventura and New York. The letter concluded that platinum worth less than $250,000 or possibly more could be shipped cheaper by air—"[i]t is evident, therefore, that our present standard rates are decidedly competitive * * *" (R. 990). Smith wrote the main Panagra office asking for exact information concerning freight charges on platinum shipments so

that he could submit proposals to a company making such shipments by water (R. 1000):

> [T]he only way we can hope for any progress in dealing with such important shippers will be to follow the lead of our surface competitors and offer freighting agreements based on firm prices, unalterable during the life of the agreement. We feel sure that there is nothing unorthodox in making the above suggestion as we have convinced ourselves that it is common practice with such an established firm as the Grace Line, Inc., by their own admittance.

Vidal, who was in Panagra's main office, wrote a Panagra representative in South America in 1936 that air/rail charges for gold from Guayaquil, Ecuador, were "rather expensive * * *. We have no intention of going into a cut-rate war with the steamship companies and we recommend that you attempt to secure frequent gold shipments of smaller sizes. These can be handled at competitive rates by air/rail" (R. 991). Shortly thereafter, in 1936, Holguin, a Grace representative in South America, wrote Vice President Garni of Grace expressing fear that gold shipments from Ecuador to New York, which had been moving on Grace steamships, would be diverted to Panagra because of its lower rates. He recommended that Grace either reduce its rates or secretly refund the difference between air and ship rates (R. 994–996). Grace subsequently reduced its freight charges (R. 999). As a result of reducing its charges on gold, Garni and Holguin believed that Grace would "be able to secure all of the future [gold] shipments of the Banco Central via the Grace

Line" (R. 1001). Meanwhile, Vidal again wrote Panagra's representative that "our present rates on gold shipments to [the United States] compare favorably with those of steamship lines on small lot shipments," and that Panagra could not "enter a cut-rate war with steamship companies for this business" (R. 1002). At least one shipment of gold from Ecuador was carried by Panagra (R. 1033). Considerably later in 1942, Muhlfeld, now the sales manager of Panagra, instructed the Cali, Colombia, office of Panagra to actively attempt to obtain gold shipments "now going forward by steamer from Colombia to the United States" (R. 1029). In 1949, Grace sent a telegram urging a slight increase in Braniff's gold tariff, and asking to be informed "if any diversion from air to steamers actually takes place because of extra charges" (R. 1037).

In 1952, an assistant district sales manager of Panagra wrote the Pepsi-Cola Company in the Canal Zone concerning air shipment of cola concentrate. The letter noted air rates were high in comparison to steamship but suggested a means to offset or reduce the difference (R. 1044).

In addition, there is evidence in the record demonstrating that Grace and Panagra believed that they were potential competitors as to passengers and in fact did compete to some extent. In 1932, the general manager of Panagra, MacGregor, wrote a Grace-Panagra representative in South America that lower rates for passengers on Panagra may be necessary "if we are to compete with the lower steamship through rates now being studied by the Grace Line"

(R. 971). In 1933, an employee of W. R. Grace wrote to Grace Line that (R. 972):

> It is also well to note that the aviation services are taking away first class passengers—especially coastwise. Between the Panagra and the Faucett Co., they are carrying 700 to 800 passengers a month, who would be travelling by steamer, first class, if these companies did not exist.

An employee of Panagra in the Canal Zone wrote MacGregor concerning the small percentage of passengers being flown to and from Buenaventura as compared to Barranquilla, Colombia. He noted among the factors explaining the discrepancy: first, three steamship lines, including Grace, sail from the former and only two, including Grace, from the latter; and second, at Barranquilla the airport is more convenient for passengers than the embarkation point for steamships (R. 979–980). A letter by Vice President Roig of Grace in 1936, discussing the competition of Grace and Panagra for passengers, said that the percentage travelling by air was likely to increase slowly.

In 1937, a Panagra employee, Muhlfeld, wrote its general manager, MacGregor, that Grace was offering discounts on passenger travel to companies. He recommended that (R. 1011):

> [W]e should also give due consideration to this as we are in many instances competing with other surface transportation and naturally we should take into account not only their tariffs, but also special discounts, such as Grace Line are granting.

Vidal, another Panagra employee, subsequently wrote Muhlfeld concerning the possibility of a rate increase by Panagra (R. 1012):

> As the Grace Line, and apparently other steamship companies, have and are revising their passenger rates upwardly because of increased operating costs, and as our own costs are also on the increase, it may well be that this would be an opportune moment for Panagra to raise the prevailing rates throughout the line.
>
> * * * * *
>
> * * * Other tariffs could be adjusted * * * by bearing in mind competitive and pay load conditions over the various sections of the line.

Muhlfeld then wrote various agencies handling Panagra's business in South America concerning the wisdom of a possible 20 percent rate increase and told them to consider among other factors the recent increase of rates by surface carriers in South America (R. 1013). The reply from Panagra's employee in the Canal Zone approved the proposed increases after comparing air and steamship rates and the time needed to make the respective trips (R. 1014–1015). On the basis of his analysis, based in large part on "competitive conditions offered by other airlines and surface means of transportation" and "inherent advantages of air travel over other means of transportation," Muhlfeld recommended to general manager MacGregor of Panagra that only one rate be raised—"[a]ll other tariffs should not be raised because of competition from other air lines and surface means of transportation" (R. 1016). A

little later, Vidal wrote to Muhlfeld that Pan American had "also come to the conclusion that rising operating costs and the higher passenger rates being established by steamship lines" justified it in raising its fares (R. 1019). In 1938 President Iglehart of Grace wrote a letter explicitly stating that Panagra and Grace are in competition (R. 1027):

> Panagra is a direct competitor of the Grace Line and has, year by year, eaten into that line's passenger business in a suppressing way.

A Panagra representative in Chile wrote the home office in 1949 (R. 1038):

> It is most unfortunate that the Grace Line was quot[ing] more attractive rates than Panagra by accepting not only round trip passages in Chilean pesos but also pasajes de llamada. We are losing traffic every day to the Grace Line, especially return business, booking by steamer to take advantage of the facility of purchasing the passage in pesos * * *. This feature now gives them an important sales advantage and we feel that both carriers should maintain the same policy towards pasajes de llamada.

A letter in 1951 to a South American representative of Grace and Panagra cautioned against leaflets advertising both companies because "to a certain extent [they] are competitive services" (R. 1041). A little later in 1951 a letter from a Panagra employee to its Assistant Vice President warned that a problem was raised in giving passenger lists to W. R. Grace (the parent company of Grace Line) because the list would

become "available to our competitor, Grace Line * * *" (R. 1043). In 1952, the Panagra general traffic manager wrote to Braniff that Panagra allowed passengers to accept baggage on board aircraft leaving the United States in order to avoid payment of the luxury tax. The reason, according to the letter, was that "we have found it necessary to be competitive with steamship services * * *. While the number of people who take advantage of it are not very numerous we would not wish to give it up because of the competitive steamship situation" (R. 1045). And in January 1953, Pan American's monthly sales report stated that the competition on the United States-Buenos Aires route (R. 1046):

> is less acute * * * because Moore-McCormack is more expensive than the airlines and Delta only a bit cheaper but every month Flota Mercante, the state-owned steamship line of Argentina, is taking a bigger number of American passengers * * *.

To meet this competition, Pan American was proposing to Flota Mercante agreements between the air and sea carriers and making demonstrations to American companies in South America that it was cheaper to send their vacationing American employees to the United States by air rather than by sea because of the shorter time in transit (R. 1046–1047).

At the trial Pan American's treasurer testified (R. 229):

> *Q.* * * * does Pan American engage in publicity efforts to sell passengers on the idea that

an air trip is more pleasant than a sea trip?
A. Oh, I am sure we do.
Q. Do you consider that Pan American is in competition with these steamship lines?
A. Very definitely. We are both trying to get the same market.

Thus, Panagra and Grace have been potential competitors for passengers from the time of Panagra's formation through the time of trial of this case. Admittedly, the area of potential competition for cargo has in the past been less broad. We submit, however, that the interference with normal airline-steamship competition in the case of passengers, which resulted from Grace's control of Panagra, should not be allowed to extend in the future to cargo as well in an era of increasing competition in freight service.

4. In our opening brief we argued (Br. 33–34, 40–42) that the formation of Panagra was accompanied by a division of territory between the new company and Pan American which reflected the anticompetitive purposes of the partners. The existence of this agreement is hardly open to doubt. In 1930, President Trippe of Pan American, at the request of the general manager of Grace, wired the Pan American office in Buenos Aires (R. 513):

AGREEMENT BETWEEN PANAMERICAN AIRWAYS AND PANAMERICAN GRACE AIRWAYS PROHIBITS PANAMERICAN AIRWAYS OR ALAS OPERATING BUENOSAIRES MENDOZA SANTIAGO LINE ALTHOUGH PERMITTED OPERATE ANY OTHER ROUTES EAST OF ANDES INCLUDING BUENOSAIRES MONTEVIDEO STOP AGREEMENT LIKEWISE RESTRICTS PANAMERICAN GRACE AIRWAYS OPERATIONS EAST OF ANDES TO

SANTIAGO MENDOZA BUENOSAIRES MONTEVIDEO LINE

A similar letter was sent by President Trippe to MacGregor, the vice president and general manager of Panagra, approximat ly seven months later (R. 520–522). On the basis of this and considerable other evidence, the district court found that a division of territories had been agreed upon and the parties do not dispute this finding.[4]

Grace now maintains (Br. 48–50) that the division of South America into protected spheres for Pan American and Panagra was to last only during the ten-year period of Panagra's first mail contract and did not survive the imposition of federal regulation in 1938. The record shows, however, that Grace itself believed that the arrangement continued well after 1938. In 1946, Grace Vice Chairman Roig (as he had become) cabled Grace Vice President Garni that "if avianca in which pan american owns 40 odd [percent] can invade west coast we consider we are entitled [to] serve * * * all colombian points * * *" (R. 635–636). This statement is phrased in terms strongly indicating that Roig believed that, if Pan American, through its subsidiary Avianca, entered the

[4] There is a dispute between the parties as to whether the agreement barred Panagra from entering the United States. Grace has contended that it did not; Pan American and the United States submit that it did. From our standpoint, however, the issue is not relevant. Whether the agreement covered the point or not, the 50–50 division of control gave Pan American the power to exclude Panagra from the United States, and no one can have doubted Pan American's intent to exercise that power. Admittedly, moreover, there was an agreement to divide South America.

west coast area guaranteed to Panagra by the division of territories, Panagra could operate in areas restricted to Pan American by that agreement. In 1948, J. Peter Grace, the President of W. R. Grace, wrote to Vice President Roig that "it had been our understanding that it had been agreed at the time that the Panagra Through-Flight Agreement was signed [1946] that Western Colombia was Panagra's territory and furthermore that a Gentlemen's Agreement was made that Panagra could at any time petition the C.A.B. for inclusion of Bogota and Medellin on its route * * *" (R. 638). This statement shows that the original agreement had specifically been reaffirmed. In 1950, Shea, Grace's First Vice President (R. 645):

> expressed great unhappiness over the plans of Panair do Brasil [a Pan American subsidiary] to establish routes from Rio to Santiago and Lima respectively. * * * He saw the possibility of ambitious plans developing under which Panair do Brasil would eventually want to operate along the west coast of South America to the west coast of the United States. * * * He seemed to feel especially bitter because Panagra could not serve the Lima-Rio route in competition with Braniff and was disappointed because Panair do Brasil, in which Pan American Airways held a substantial interest, was entering Panagra field on the west coast of South America.

Thus, Grace had made clear through its highest officers that as much as twelve years after passage of the Aeronautics Act in 1938 it still regarded South

America as divided into territories between Pan American and Panagra.

We, therefore, respectfully submit that for the reasons stated above and in our original brief, the judgment of the district court insofar as it fails to order the divestiture of Grace's interest in Panagra should be reversed.

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OCTOBER TERM, 1962.

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR APPELLEE W. R. GRACE & CO.

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The occasion for the submission of this Reply Brief is the filing by the Government of a Reply Brief which refers to and discusses in some detail a number of pieces of evidence which were not adverted to by the Government in its main brief. Since the evidence selected by the Government, and the manner of its presentation, does not fairly represent what the evidence as a whole shows, we regard some further discussion of the several matters considered by the Government in its Reply Brief as appropriate.

The Government's brief considers four points. With respect to each point the Government seeks to reargue the facts, in a manner not attempted in its main brief, in an

effort to upset certain findings of the District Court. We submit that, in each instance, the findings of the District Court were correct.

1. The District Court correctly found that Grace did not participate in the formation of Panagra with an intent to restrain aviation competition.

The District Court specifically found, after analyzing the entire record, that:

> "We cannot, from the evidence adduced, make out an unlawful intent to restrain aviation competition in the Grace participation in the formation of Panagra . . ." (R. 5392).

The District Court further found that the combination of Grace and Pan American:

> ". . . was a legitimate one with legal ends—to foster the development of a new form of transportation" (R. 5403-04).

The Government selects from the record two documents in an effort to upset these findings (R. 966-67, R. 968).

The two documents selected do contain references characterizing the new branch of transportation as a possible future competitor of Grace Line's steamers. They contain no suggestion, however, of an intent to enter the airline business in order to protect the steamship line from an active development of parallel air service. Rather, Iglehart, in the two letters cited, merely recognized that air service was likely to become an important means of transportation and that Grace should take steps to participate in it. As he says in his letter to Garni (R. 968) which the Government cites:

> ". . . we have an exceptional opportunity, not only of developing a successful business, but of making

> money out of it. But it can only be done if all of our men and particularly our men on the Coast are giving enthusiasm and confidence and a very strong effort to make it a success."

These documents are consistent with, and indeed support, the statement of Mr. Patchin, a Grace Manager, in 1928 that:

> "... we regarded aviation as simply a new development in transportation and as we had always been interested in transportation to the West Coast of South America we were following the matter closely" (R. 340).*

The District Court's finding that Grace had no intent to restrain aviation competition was not clearly erroneous.

2. **The District Court was right in finding that the East-West zoning arrangement terminated in 1938 with the passage of the Civil Aeronautics Act and the termination of Panagra's ten-year mail contract.**

The District Court found that the East-West zoning arrangement applied by Pan American and Grace during the decade of the 1930's was "consistent with the best interests of this country in establishing and developing American international aviation in the years from 1929 to 1938 ..." (R. 5398).

As we pointed out in our answering brief (p. 49), the Government nowhere in its main brief pointed to any

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* The Government says in its Reply Brief that contemporary documents are more reliable than "unsupported assertions interested officials made before the district court". Grace presented no such evidence. Grace did introduce testimony which was taken in C. A. B. Docket 779 in the early 1940's, long before this case was commenced, which supports the description of Grace's motives which is set out above (Grace Answering Brief, P. 26).

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instance in which Grace recognized or adhered to this East-West zoning arrangement subsequent to 1938. The Government now points to three documents, which it did not previously mention, in an effort to show the existence of such an instance.

The Government relies on a letter dated November 1, 1948, from J. Peter Grace, President of Grace, to Vice-President Roig expressing his understanding that there had been an agreement at the time the Through-Flight Agreement was signed that "Western Colombia was Panagra's territory . . ." (R. 638). The Government fails, however, to advise the Court that Mr. Roig, who had negotiated the Through-Flight Agreement, immediately responded to Mr. Grace in a letter dated November 5, 1948, pointing out that Mr. Grace's recollection was faulty and that there was no such agreement. Mr. Roig said:

> "There is, however, no arrangement under which Western Colombia is considered Panagra territory . . ." (R. 5061).*

The exchange of correspondence contradicts the Government's position rather than supporting it.

The Government also relies on a cable sent by Roig to Garni in 1946 (R. 635-36) and on notes of a telephone conversation between Shea of Grace and Balluder of Pan American in December, 1950 (R. 644). These documents do not, however, support any inference that Grace adhered to a zoning arrangement at these times. Rather the documents instance situations in which Grace complained of the inconsistency of Pan American's position in resisting Panagra's development.

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* It is interesting to note that Pan American, in its Reply Brief in No. 23, also refers to Mr. Grace's letter without advising the Court of Mr. Roig's enlightening response (PAA Reply Brief, P. 28, note).

It must be borne in mind that, while Grace has since 1938 refused to adhere to any zoning arrangement, Pan American has at all times taken the position that Panagra's operations are restricted by such an arrangement; indeed, Pan American still holds to that view. Under these circumstances, it was not unnatural for Grace to point out to Pan American that in particular instances Pan American did not even apply its own theory consistently.

This is the thrust of Roig's cable of March 8, 1946 (R. 635-36). Grace had been seeking extension of Panagra's routes to Bogota, but Pan American had refused to permit the extension (R. 633-34). Roig pointed to the inconsistency in Pan American's position whereby it opposed Panagra's extension to Bogota, but allowed Avianca's extension to the west coast. Similarly, in the telephone conversation reported at R. 645-48 Shea was complaining of Pan American's inconsistency in refusing to permit Panagra's operating from Lima to Rio while at the same time supporting Panair do Brasil's service of this same route. The documents cited by the Government show, not that Grace adhered to a zoning arrangement during this period, but rather that Grace complained vigorously of the restrictive policy adopted by Pan American which permitted encroachments upon, but not extension of, Panagra's routes.

The Government makes no effort to reconcile the argument which it bases on these three documents with its own recognition that Grace's actions belie the existence of any zoning arrangement. As we pointed out in our answering brief, the Government has recognized, not only that Grace fought to extend Panagra's routes north from the Canal Zone, but also that Grace has, since 1938, fought to extend

Panagra's rountes to eastern South America (Answering Brief of W. R. Grace & Co., pp. 49-50). There could be no clearer proof of the emptiness of the Government's division of territories argument.

3. The District Court correctly found that Grace's 50 percent control of Panagra has not restrained Panagra's vigorous development.

The District Court found that:

> ". . . the record before us fails to disclose any antitrust violations on the part of Grace vis-a-vis Panagra . . ." (R. 5392).

The District Court further found that:

> ". . . the history of Grace's activity in the affairs of Panagra preponderatingly demonstrates that it fostered and fought for Panagra development and expansion." (R. 5392).

and that:

> ". . . Grace has been the only one of Panagra's two partners that has persistently and continuously attempted to improve its service and extend its routes to the United States." (R. 5429).

The Government in its Reply Brief attempts, for the first time, to dispute these findings by a selective citation of documents from the record.

In its own brief, the Government recognizes some of the deficiencies of the evidence which it cites. Thus the Government recognizes that the evidence it cites "largely involves events in the thirties" and it is willing to assume that "in recent years" most of what it refers to as "blatant restraints" have ceased.

While the Government seeks to suggest that the Grace agencies in South America have not fairly represented Panagra, it at the same time concedes that "the management of Grace and Panagra attempted to prevent [the Grace agencies] from unduly favoring Grace's interest over Panagra's" and that "Grace's management frequently attempted to insure that its representatives treated Panagra fairly."

What the evidence cited by the Government boils down to is a series of isolated instances, almost exclusively in the early 1930's, in which there were organizational difficulties, differences of opinion as to the best way of conducting the airline business, or occasional derelictions by individual local employees in their conduct of the airline's business. That there was no pattern or purpose of restraint is evident from the Government's concession that Grace's management "attempted to insure" that Panagra would be treated fairly. An example of the policy of Grace's management to which the Government is referring is a letter which Garni of Grace wrote on October 27, 1933 in which he said:

> ". . . everyone of our Agents should get wholeheartedly behind this business and not subordinate it in any way to our steamers. I appreciate that this may divert a few passengers from our steamers to Panagra but this is relatively unimportant as in the first place it cannot amount to much per annum and in the second place travelling by air, particularly on the West Coast, is bound to develop very rapidly anyhow over the next few years." (R. 982).

While the Government hypothesizes that this effort was unsuccessful and that Panagra's interests were not well served, that hypothesis is disproved by the record. For example, MacGregor, a former Pan American Vice-Presi-

dent who became Vice-President and General Manager of Panagra stated in 1935 that:

> "... services rendered by the Grace Organization were greatly in excess of those rendered by Pan American ... Grace have carried out wholeheartedly and with the 100% cooperation of their whole organization the services to the Line which were contemplated in the original partnership ..." (R. 4929).

Similarly, in that same year, Mr. Chenea, Pan American's Sales Manager, "expressed himself as very much impressed by the effectiveness of the agency service on the West Coast" (R. 4930). Chenea also "expressed strong belief in the theory of having people in the steamship business also handling air traffic as he feels that the two work together very well and that the air business does not suffer from this association in any way." (*Ibid.*)

The Government refers to an instance involving certain gold shipments in which Panagra's interests were allegedly subordinated, but fails to quote in full the most significant comment on this entire episode, which was contained in a letter written by Roig on March 30, 1936:

> "My attention has been called to correspondence with reference to recent gold shipments from Ecuador.
>
> "This happens to be one of the few instances which have arisen involving a conflict of interest between Panagra and the Grace Line. I recognize that in this situation your position as representing both concerns is a difficult one. When such questions arise, however, they cannot be resolved on the basis of relative stock ownership and the interests of Panagra subordinated because our stock interest in that company is only 50%. If this were to be the test we would be automatically disqualified from acting as Panagra's representative.

> "I do not mean by this that the interests of Grace Line are to be subordinated to those of Panagra. Their representation is also entitled to be properly served. What I do mean, however, is that where a question of conflict of interest is presented, it is incumbent on you as representative of both companies to occupy a neutral position, reporting the facts to the corresponding principals and letting them decide what action is to be taken.
>
> "I am bringing this matter to your particular attention as it is one of the first instances of the kind which has arisen and I want to make sure, for your guidance, that our position is fully understood."

Finally, the Government cites several documents (R. 974, 977, 1020, 1021) in an effort to show that Grace maintained Panagra's rates at an artificially high level. It should first be noted that the most recent document cited in this connection is dated September 28, 1937. Moreover, while the documents indicate that there was some talk about comparative air-sea rates in the mid-1930's, they do not indicate that anything was in fact done to keep the air rates at an artificially high level. Indeed, the first two documents cited indicate that air fares had been established that were lower than the corresponding steamship fares. The two memoranda dated September 28, 1937 (R. 1020-22) show, not that the air fares were pegged at an artificially high level, but rather that they were based on appropriate economic considerations, *e.g.*, rising costs. The proof of the pudding is that the only comparative fares which appear in the record—the fares in effect at the time of trial—show the Panagra fares to be substantially less than the corresponding Grace Line fares (R. 5205). Moreover, as we pointed out in our answering brief, under present rate-making practices and Civil Aeronautics Board

regulation any improper influence by Grace on Panagra's fares is not possible (Brief, p. 97).

The evidence cited by the Government provides no basis for challenging the District Court's conclusion that Grace promoted, rather than restraining, Panagra's development. This is perhaps most evident from the fact that the Government is now able to characterize Panagra as "the dominant air carrier" to the western coast of South America (Main Brief, p. 63).

4. The District Court correctly found that Air and Sea Transportation between the Eastern Coast of the United States and the Western Coast of South America do not form parts of the same competitive market.

The District Court, after carefully considering the similarities and differences between air and sea transportation concluded that:

> "We are not persuaded that the proof in this case shows that the market is the same." (R. 5426).

In its Reply Brief the Government points to nothing which would warrant rejection of that finding.

The Government argues that it need not show that air lines and steamship companies compete for everything they carry, but no one has suggested that it does. The reason the Government's case must fail on this point is that it has failed to show either that Panagra's and Grace Line's services are "reasonably interchangeable" or that there is a significant amount of competition between them in any area of their operations. The Government itself has recognized "reasonable interchangeability" as the proper test (Main Brief, p. 48).

The Government does not materially help its case by its heavy reliance on the biased testimony—rejected by the

District Court—of Pan American's treasurer and Pan American's cargo manager, who conceded he had no knowledge of operations on Panagra's route (R. 66). Nor does the Government justify upsetting the District Court's findings by referring to a few isolated incidents of competition in the 1930's.

We submit that Grace's participation in the organization of one of the pioneer companies in the infant airline industry, and its development of that airline to its present position, have not unreasonably restrained trade. We submit that, for the reasons set forth above and in our original brief, the judgment of the District Court should be affirmed.

Respectfully submitted,

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